S. HRG. 100-734

COMMERCIAL ACTIVITIES CONTRACTING ACT OF 1987

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST AND SECOND SESSIONS

ON

S. 909

TO REQUIRE THAT ALL AMOUNTS SAVED AS A RESULT OF FEDERAL GOVERNMENT CONTRACTING PURSUANT TO OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-76 BE RETURNED TO THE TREASURY, THAT MANPOWER SAVINGS RESULTING FROM SUCH CONTRACTING BE MADE PERMANENT, AND THAT EMPLOYEES OF AN EXECUTIVE AGENCY BE CONSULTED BEFORE CONTRACTING DETERMINATIONS BY THE HEAD OF THAT AGENCY ARE MADE PURSUANT TO THAT CIRCULAR

DECEMBER 17, 1987 AND MARCH 30, 1988

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

82-772 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S401-59

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COMMERCIAL ACTIVITIES CONTRACTING ACT OF 1987

THURSDAY, DECEMBER 17, 1987

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:06 a.m., in room SD-342, Dirksen Senate Office Building, Hon. David Pryor, Chairman of the Subcommittee, presiding.

Present: Senator Pryor.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Good morning, ladies and gentlemen. The Subcommittee will come to order.

I would like to welcome this morning Senator Reid and the other witnesses. I know that some of the witnesses have come from great distances to help us with our deliberations on S. 909, the Commercial Activities Contracting Act of 1987, which is sponsored by Senator Harry Reid.

I might add that I am a cosponsor of this legislation. It would return to the Treasury all cost savings resulting from the so-called A-76 program, the program established by OMB Circular A-76 to increase the contracting out of government activities.

At the outset of this hearing, let me state that we are not here to determine whether or not the Administration's push to contract out should be limited or expanded. The President has decided on his own to expand this program and issued a strongly worded Executive Order exactly one month ago to carry out his decision.

This order makes our job today even more important. Our intent is to find ways to harness savings from contracting out and to put those savings to work on reducing the Federal deficit. That, unfortunately, is not what we are seeing Government-wide today.

According to the Congressional Budget Office and the President's Office of Management and Budget, millions and perhaps billions of dollars have been saved in recent years by contracting over $36 billion in Government activities to the private sector.

Most Americans and, I daresay, most Senators, reasonably would assume that those savings go directly back to the U.S. Treasury. That makes common sense, but because of a loophole the size of a Swiss bank account, that is not the current practice.

Unfortunately, a likely scenario goes like this: an agency is told to cut costs by allowing the private sector to compete for one of its operations. A private bidder who says he can do it for less wins the contract, and the agency reports that it has saved the taxpayers *x* number of dollars. The unfortunate part is that any so-called savings disappear into the agency's coffers to be "re-allocated" as the agency pleases.

Senator Reid's legislation addresses this very issue. Thus, a penny saved by contracting out is not necessarily a penny saved at all, it is a penny spent elsewhere on favorite projects. I call it, as others do, funny money, as it contributes to our massive budget deficit.

We will have some time constraints placed upon all witnesses today and we apologize for that. However, we are now in many Appropriations and Budget conference meetings. I must be in an Agriculture meeting, for example, at 11 o'clock this morning, and I know that Senator Reid has an Appropriations Committee meeting, relative to putting together the final package to present to the Senate floor in the next day or so.

[Senator Pryor's prepared statement follows:]

PREPARED STATEMENT OF SENATOR PRYOR

I would like to welcome Senator Reid and the other witnesses here today. I know that some witnesses have taken time off from work and come from great distances to help us with our deliberations.

Today the Subcommittee begins its examination of Senator Reid's bill, S. 909, of which I am a cosponsor. This bill would return to the Treasury all cost savings resulting from the so-called A-76 program—the program established by OMB Circular A-76 to increase the contracting out of government activities.

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Unfortunately, a likely scenario goes like this: an agency is told to cut costs by allowing the private sector to compete for one of its operations, a private bidder who says he can do it for less wins the contract, and the agency reports that it has saved the taxpayers *x* number of dollars. The unfortunate part is that any so-called savings disappear into the agency's coffers to be "re-allocated" as the agency pleases.

Thus, a penny saved by contracting out is *not* a penny saved at all, it is a penny spent elsewhere on favorite projects. I call it funny money, and it contributes to our massive budget deficit.

In my opinion, this is an example of how a well-intentioned government program has been at least partly derailed by illogical implementation.

Senator Reid's presentation will outline his plan for getting contracting out back on the right track.

One of the advantages that I hope will result from this initiative is that the government will keep better tabs on contractors and on the Administration's claims of huge savings. An agency forced to return contractor savings to the Treasury will make very sure that the contractor delivers on its promise. We will also be better able to assure that we get the best deal for the taxpayer—that we are not just contracting out mindlessly in order to meet some arbitrary goal set by privatization

idealogues. Contracting out should have as its number one goal saving money—not simply getting more consultants and contractors.

One month ago the Administration issued a new directive for agencies to base a decision to hire a contractor on whether, and I quote, "private industry costs are unreasonable." They seem to be saying: if there is not an obvious and unmitigated taxpayer rip-off, hire the contractor.

To explore this aspect of Senator Reid's legislation, we will receive testimony from people who are personally familiar with specific contracting out cases that resulted in cost overruns or other problems that erased any benefits from the A-76 process.

In the coming weeks, this Subcommittee will take a thorough look at this legislation. Representatives of the executive branch will be brought in for consultation.

On that point, I would like to announce that the Office of Management and Budget has expressed their support for this legislation and are sending a letter to the Subcommittee expressing their formal endorsement.

With that, again I welcome our witnesses and thank them for being here today.

Senator PRYOR. At this time I call on Senator Harry Reid.

TESTIMONY OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA[1]

Senator REID. Senator Pryor, thank you very much.

This record will be prepared and in the years to come people will read it, and I want it to reflect the fact that, but for your help, this legislation would not become law. I do believe this legislation will become law.

We have the best ideas in the world, but if you do not get someone that is interested in the ideas, that is in a position of leadership, you cannot go anyplace with them. This is not the best idea in the world, but it is a good idea. And but for your help, Mr. Chairman, I could not move this legislation forward.

I again commend and applaud you for holding this hearing and also for agreeing to cosponsor this legislation. I feel very indebted to you for doing this, especially in light of everything that is going on. There are just lots of things going on in these last few days of the session.

Mr. Chairman, history's largest stock market crash told Government that American taxpayers want real solutions to bloated Federal deficits. Now the largest debtor country in the world, America's trade deficit numbers in the billions. The dollar value worldwide continues to fall sharply and still Federal agencies keep demanding more money.

These unelected Federal agency officials demanding more and more money and inefficiently spending it are a major cause of America's financial problems.

Chart one, Mr. Chairman, which I have here and you cannot see completely, it is on the left. You cannot see it all, because part of it is below the chair.

It illustrates what I call "the Federal money tree." It basically shows how Government budgets and spends. On the left we see the blue lettering divided by a dotted line. Above the line is budgeting, below the line is spending.

On the right of the chart is what I call the money tree. These government groups, outlined in green, form the shape of this tree. On top of this tree sits Federal agencies clamoring for money. Working through the Office of Management and Budget, or OMB,

[1] See p. 60 for Senator Reid's prepared statement.

the President submits a budget to Congress. Then Congress, working again with the President, budgets, authorizes and appropriates these funds. That's the budget process, again, as I mentioned above the dotted line.

Below the dotted line is the spending process. Once Congress appropriates the funds, the President, again working through OMB, allows funds to flow from the Treasury to the Federal agencies.

Regardless of how one views Gramm-Rudman or any other budget cutting mechanism, these solutions try to solve America's money problems by focusing on the budgeting process.

Today's bill, Mr. Chairman, S. 909, the Commercial Activities Contracting Act of 1987, which we good naturedly call by its acronym CACAL, is different. It focuses on the base of the tree, or the spending process, not the budgeting process. In particular, it goes to the root of the tree where the problem originates, Federal agency spending.

The red arrow at the root of the money tree from Federal agencies back to the Treasury, illustrates what CACAL does. S. 909 forces Federal agencies to give unneeded slush funds back to the Treasury.

Mr. Chairman, in some of the conferences we had yesterday, it was interesting to find that some of these Federal agencies had unexpended monies. They had slush funds. It was not any one agency, but almost all of them had funds that were unappropriated. This illustrates where part of these slush funds come from.

CACAL makes no cuts in agency services. It requires no reduction in budgets. It simply requires that unneeded money be returned to the Treasury for deficit reduction.

If we could, Mr. Chairman, turn our attention to the second chart. It outlines in blue three areas of A–76 management studies: competition, savings, and who gets the savings.

On the top of the chart, we find A–76 efficiencies that come from so-called competition between Federal workers and industry contractors. Whoever bids the lowest gets the work. Controversy now surrounds the fairness of this competition.

The reason I became interested in this, Mr. Chairman, is due to what happened at an ammunition depot in Nevada, a place called Hawthorne, which was developed early in this century. It was the largest naval ammunition depot in the world. As all of the military has consolidated its ammunition, it is now run by the Army.

It is a disaster what has happened there. It is an absolute disaster what has happened to the work force there, and the savings are only on paper. There are no savings to this government. The situation at Hawthorne is what caused me to become interested in this issue.

Back to the chart. The chart shows dollar savings resulting from competition. From 1980 through 1986, just a short period of time, the savings have averaged 30 percent of the original project cost. We are told the cumulative total savings from these projects exceeded $2 billion.

Additionally, 10,000 personnel, and recognize this, Mr. Chairman, have been relocated. Not saved, not cut off, but relocated. Their positions were never reduced. The people were just relocated. It's the old shell game, don't cut the work force, simply hide it. We are told

cumulative total savings from eliminating these unnecessary hidden positions from 1980 to 1986 are in excess of $2 billion.

The total of all savings comes to over $4 billion. Again, controversy surrounds what savings actually occur.

Finaily, the chart asks, "Who gets the savings?" Now, Federal agencies keep the money, increasing the budget deficit. Is it not astonishing? America is in the worst financial crisis in its history, most say, and Federal agencies create "slush funds." Gnawing at the "money tree's" base, these agencies refuse to reduce their budgets.

This is the most deceitful, harmful scam you can imagine. The only one that I know of, in recent years, that would compare, Mr. Chairman, would be that of the nuclear waste outrage that is taking place.

Good management must benefit the taxpayer, not burden him. I strongly oppose Federal agencies keeping these savings. Government efficiency means giving agencies less money, not more. We must account for all money spent. Where is the $4 billion that has been saved? Where did the money disappear? CACAL changes what happens to the savings. S. 909 proposes returning all savings from A-76 management studies to the Treasury for deficit reduction.

I am happy to report, Mr. Chairman, the Senate Appropriations Committee now recognizes the importance of this issue. A few weeks ago that Committee, based directly on A-76 savings, cut $117 million from the Defense Appropriations bill.

Additionally, President Reagan recently signed Executive Order 12615. This order has language that finally requires some agencies to include some, not all, of their A-76 savings in their annual budget proposals to OMB.

These are encouraging signs. We are moving in the right direction, but we need legislation requiring all Federal agencies to give back all unneeded dollars every year.

When I give my 12-year-old son a dollar and send him to the store to buy some milk, he always returns the change. It is time Federal agencies started to do the same; return what they do not need and do not deserve. That is a real solution to reducing America's budget deficit.

Mr. Chairman, I will close by saying I will guarantee you that if the Federal agencies had to return these monies and account for these relocated personnel, there would not be these contracting out efforts taking place, because simply the money would not really be saved. It is just a shell game.

If the Subcommittee has any questions, I would be happy to answer them, Mr. Chairman.

Senator PRYOR. Senator Reid, I want to applaud you for your statement and also for providing the Subcommittee the charts that you have presented. We will take those charts and reduce them to a form where they can be placed in the hearing record.

I do have a question or two. One, would an agency with left over dollars be allowed to ask Congress to reprogram any of those savings? Do they come before the Congress and ask for permission to reprogram, or do they have free authority to take those savings and do what they wish with them?

Senator REID. Mr. Chairman, my limited experience is that they do what they want with those monies.

Senator PRYOR. I think you are correct.

Senator REID. Under S. 909 there will be no reprogramming. As I indicated earlier, we found all kinds of unauthorized monies that agencies had left over from sources like this.

Senator PRYOR. Do we have any idea, rough idea, as to how much money may be out there unused, unallocated, unappropriated in these accounts government-wide?

Senator REID. I have indicated that I feel as much as $4 billion, just in 6 years, is there someplace that should be direct savings to this Government.

Contracting out sounds great, Mr. Chairman, if in fact something is accomplished with the contracting out. We have had experiences in Nevada, not only at Hawthorne but at Fallon. It looks good. You can issue a press release saying the private sector can do it more cheaply.

We got into what happened at Fallon. From proposed savings of millions of dollars when they first started talking about contracting out, it got down to a matter of two people. That is what they saved; two people's jobs over this period of time. Then they issued press releases that they saved the Government all this money and the private sector is more efficient.

But the fact of the matter is that they do not talk about all the personnel that are relocated. They do not talk about personnel that really is not reduced. They do not talk about the fact that contract overruns take place almost uniformly. Experiences we have had in Nevada where they contract out at a low figure like this, show that they always come back for more money.

So the savings are on paper only. It is good for a press release or two, but it is not lasting. I think this legislation is a step in the right direction for accountability. If, in fact, with contracting out there are savings, then let those savings go to reduce the terrible deficit we have.

Senator PRYOR. Senator Reid, some years ago when I first came to the Senate, I became very involved and interested in the number of consultants that our Government hires, many times to do jobs that have already been done. We did a lot of work, held several hearings, sort of put the light on the consulting industry. Some called them the Beltway Bandits; some called this group the unelected government, whatever.

But the A–76 issue is a somewhat related issue. The oversight of A–76 and the oversight of the consulting industry as it relates to very important decision making and the expenditure of billions of dollars a year by the Federal Government, has not been what it should be.

The legislation that you are presenting today to this subcommittee, and hopefully to the full Senate and the House, is the type of legislation that I think addresses a problem that we have been very, very negligent in addressing and doing something about.

Senator REID. Mr. Chairman, one last comment based on your statement about consultants. There is a newspaper publisher in Nevada that has done a study, the man's name is McCloskey, about

the type of people that step in when these contracts are let by the military.

It is always somebody that is from the military that takes over the operation. The example is very evident at Hawthorne again, where the contractor that took over is nothing more than a retired military person.

Senator PRYOR. Senator Reid, we have Senator Boschwitz here today and he just wrote me a note. It says "Your luck just ran out. I am here to lobby you on the Agriculture bill." So I do not know what exactly is about to transpire, but I will call our first panel, Senator Reid, and I would like to invite you to join in questioning the panel today.

Senator REID. I would be able to stay for just a few minutes and then I have to go do some appropriating.

Senator PRYOR. You are welcome to join, if you so desire.

Senator REID. If I could just stay for a few minutes, I would appreciate that.

Senator PRYOR. We will now call Mr. Randy Banovich, Cost Estimator, Fallon Naval Air Station, Fallon, Nevada, and Ms. Eileen Cooke, Director of the American Library Association. I believe that you are accompanied by Ms. Anne Heanue, is that correct?

We look forward to your statements this morning, and I hope that you understand and are sensitive to the time problems we have on this particular morning. Thank you.

Mr. Banovich.

TESTIMONY OF RANDY F. BANOVICH, COST ESTIMATOR, FALLON NAVAL AIR STATION, FALLON, NV [1]

Mr. BANOVICH. Thank you, Mr. Chairman, Senator Reid. I thank you for the opportunity to be here. I represent the people of Fallon, Nevada, the Federal employees of the Naval Air Station at Fallon, or what is left of them, and also the American Federation of Government Employees Union at Fallon, Nevada. I am the president of the union.

I would like to first say that I do strongly support the Senator's bill, S. 909 which deals with the contracting of the Federal work force. As far as I am concerned, it is a good piece of legislation and I believe the three factors that are in that bill, if adhered to at Fallon, Nevada, then I would not be here today.

Namely, the fact that we did not have the input we should have had as an employee's organization. I do not believe they are accountable for their dollar savings. I do not believe they can support the dollar savings at Fallon right now.

A–76 at Fallon, Nevada, was announced in 1982, which was supposed to be a 14-month study. That study ran 5 years. The contract was implemented in November of this year. Particular contract efforts were aimed at multifunctions, which was 26 functions for operating support services at Fallon. There were approximately 397 people involved in these activities, including military positions.

During the 5 years from 1982 to 1987, there was significant effort and substantial manpower dedicated to complete the intricate pro-

[1] See p. 63 for Mr. Banovich's prepared statement.

cedures which mainly came down to the fact that between the study and everything else, this cost study ran quite high for a 5-year period, in the neighborhood of around $8 to $10 million.

When we got down to bid opening, the original cost factors came against the employee at $3.2 million or $3 million in favor of the contractor, Morrison-Knudsen, which meant that he won by around, if I remember right, around $600,000 a year.

We appealed that based on the fact that we felt as though management did not conduct the study right. They did not allow the employee input. They did not take our input. They said they would. I challenged several areas that are in appeal right now, several times from 1984, 1985, 1986, and they said they would take care of it or that they had higher authority approval to do it the way they were doing it. But they never did answer me right or with the same answer on the same question twice.

By the time we got to the appeals process, I challenged the inclusion of the military labor, in the galley force, in the fuel farm, and other areas. That labor amounted to $4.2 million added to our study after the fact, and they beat us by $3.2 million. Between that and the contractor's thrift plan of $3.5 million, we still had beat the contractor as far as dollar amount for in-house operation versus contractor, we would have beat him.

But based on the fact of adding $4.2 million for the TAD military labor that we felt was illegal, and also the thrift plan, he did get us. We appealed it through the appeal process. We cut that down to approximately $8.9 million in our favor—the Navy agreed that they had improperly costed it and they cut it down to approximately a $1.2 million differential.

I still disagreed with it because they did not attack or address the galley, TAD labor problem, military inclusion. At that time, I started writing my Congressmen and Senators. Senator Reid did assist us in getting an IG audit at Fallon, Nevada, with the Inspector General from the Navy and the DOD along with Merle Kosh from the CNO's office.

To this day, I have not seen that study but I have been told by phone and everyone else at the time that they found costing areas in the neighborhood of another $800,000 in the galley TAD, Labor and also in the thrift plan, which cut our study down to approximately $480,000 for a 5-year contract, which is less than $96,000 a year.

I still do not agree with the TAD that they left in there, that they converted to civil service. They do not belong in there. It was never intended to be in the study. I proved that through their own RFP. That is another question.

Today we are contracted out at Fallon, Nevada. I believe that it is a double costing on your military labor and I believe I can prove that to you.

I would like to also say that the work force has been RIFed at Fallon, Nevada. We are now entering the darkest holiday period in Fallon, Nevada, because of our work (RIFed) force. One of the basic reasons for that is our people are not being placed properly because of a freeze on hiring within the Navy. The ones that were RIFed out are sitting on a stopper list, collecting severance pay, and get-

ting paid by the government to do nothing right now. They have no place to go.

A good portion of those people were never picked up by the contractor because he could not meet the price differential for labor dollars he said. But that is immaterial. I have got facts and figures to prove that that is basically not true either. The man just found a different work force to utilize that was a lot cheaper for him to make money with.

I would like to reiterate the fact that I think that S. 909, if it had been in effect in 1985 or 1984 in Fallon, Nevada, then I would not be here today and our base would not have gone contract. We cannot support the fact that they saved the taxpayers in Fallon, Nevada then 10 cents. In fact, I have got figures that I will lay out here today, if you want, that can prove that this contract at Fallon, Nevada, has cost you in excess of $7 million since they let it a month ago.

Thank you for your time.

Senator REID [presiding]. Thank you, Mr. Banovich.

Eileen Cooke.

TESTIMONY OF EILEEN COOKE, DIRECTOR, AMERICAN LIBRARY ASSOCIATION,[1] ACCOMPANIED BY ANNE HEANUE

Ms. COOKE. Thank you, Senator.

I am the Director of the Washington office of the American Library Association, a nonprofit educational organization of over 45,000 members representing libraries, library trustees, friends of libraries, and librarians who serve in all types of libraries, including Federal Government libraries and in libraries served by contractors in Federal Government libraries. We have interest in a very broad spread of issues.

Our primary concern is for the quality of service in all libraries and we feel that, first, that depends on having the professionally trained, skilled people and having the continuity of staff, both professional and support staff, who will be able to provide, in effect, the corporate memory for serving their agency people.

We feel very strongly that libraries should not be contracted out to begin with, that they are certainly, in the business area, considered part of the corporate structure for helping to make strategic decisions in policy and strategy.

We are very supportive of your bill, S. 909 and feel that it will help ensure elements of accountability, responsibility and equitability. One of the problems that exists right now in contracting out, particularly with regard as we point out in my testimony, the NOAA Library, the National Oceanic and Atmospheric Library, is totally unfair to the government workers in the way that that contract has been reviewed and carried out.

The NOAA librarians were given one chance to put in a bid. In between, there have been successive revisions in the statement of work performance, where the private bidders have been able to change their bid. We feel that that has to be changed.

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[1] See p. 69 for Ms. Cooke's prepared statement.

We do have some reservations about endorsing the manpower savings resulting from contracting out and that the savings be made permanent because, in looking at the GAO report on the NOAA library, we discovered that the way the private bidder was able to underbid the Federal workers, was to suggest that in the out years they would decrease the number of personnel by bringing in volunteers.

Considering that the NOAA library is a highly technical and scientific library, it just does not seem at all reasonable to figure that they are going to have volunteers coming to work and being assured that they will not suddenly quit at some point.

Public libraries often use volunteers and while they can help in a number of ways, they need supervision, they need training, and it is a foregone conclusion that they may be there for a very limited amount of time, but this is not the sort of continuity that we are talking about with having Federal workers there over a period of years.

You, as a Senator, can appreciate the situation—if you had to lose your administrative assistant every few months, if you used interns who were there on a volunteer basis rather than somebody that you had hired and chosen and saw trained and developed and knew what you wanted, and in some cases anticipated what you wanted.

We are concerned about the Executive Order that came out November 19, that would appear to be rewarding the contracting agency in letting them retain a part of the compensation. This again is where we feel your bill will help to assure accountability, because it could present a moral dilemma for the decision maker at the agency deciding how they are going to spend that money. It would certainly be unappropriate funds that they would have available, as my colleague to the right pointed out, whether you view it as a slush fund or whatever.

So the displacement of Federal workers, again, is a very cogent point. We feel that in some cases they are just put in other jobs, that there really is not a savings. We are concerned in the case of the apparent winner of this bid, that they are going to find that it is not going to work to have volunteers. Then you are going to find they will rewrite their proposal, that it is going to cost more in the long run.

The anomaly, as I point out on page six or seven in my testimony, is that at a branch of the NOAA library, located in Boulder, Colorado, there was a situation where there was a bid and the in-house workers won and the cost was $550,000. They are only a third of the size of the central library here. However, the winner here in Washington bid only $400,000 for the Central library.

It just does not make sense to think that they could bid that low here and come in under the amount at Boulder.

As you note, I have several pages to my testimony. There is not time to go into that, but I do want to point out at the very end of my testimony, I list——

Senator REID. Ms. Cooke, we will make sure that your entire statement is made part of the record.

Ms. COOKE. I appreciate that, and I have a couple of things that might be pertinent for inserts in the record that I mentioned.

But on page 17 of my testimony, we make several recommendations. For one, Congress should delay the award of the contract to operate the NOAA Central library until questions about the legality of the NOAA acceptance bid have been resolved.

Two, Congress should act to prevent NOAA from giving the winning contractor any opportunity to amend their best estimate unless the in-house workers are given the same chance, which did not happen in this case.

And three, Congress should ask GAO to review the legality of contractors bidding volunteers to carry out contracts under the Service Contract Act.

On page 18, I say Congress should examine what appeared to be a pressure campaign on GAO. And with that, I thank you very much for the opportunity to testify today and I hope to be able to answer any questions you may have. Thank you.

Senator REID [presiding]. You are welcome.

We do have some questions of each of you. Mr. Banovich, tell me why you feel the situation that just took place at Fallon was unfair?

Mr. BANOVICH. Well, Senator, to support that statement, I do have some figures that I would like to present here, that I did not have prior to coming here. I believe these figures will bear truth to my statement of earlier. I did not supply these, like I say, because I did not have them until several days ago.

I would like to point out, at Fallon, Nevada, that the study at Fallon, Nevada, if we would have stayed status quo—now we are talking about a budget at Fallon, Nevada, appropriations of $18,287,000 for fiscal year 1988. If we left the base at Fallon, Nevada, alone at the time and operated the military and civilian operation like we had done in the past allowing for expansion, without doing the study and spending $10 million, at the end of that fiscal year we would have been able to return to the higher authority, $172,000 out of our budget.

Based on the in-house bid, converting the military personnel to civil service and remaining in-house, based on those same figures for fiscal year 1988, we would have had a shortfall, at this point in time, one month after contract was let or 2 months as it would have been from October 1, we would have had a shortfall of $3,135,000.

Giving it to the contractor, with him replacing the military and civilian personnel and him operating the base at this present time, one month down the road—and this figure is only for 10.5 months, not 12 months—it is costing the American taxpayer right now, at Fallon, Nevada, $6 million shortfall over and above the original cost of that contract. We are $6 million in the hole right now.

Senator REID. Mr. Chairman, with your permission, could Mr. Banovich make those figures part of the record? [1]

Senator PRYOR [presiding]. Absolutely. And by the way, if we do not have time, Senator Reid, to ask the number of questions we need to ask this morning, we are going to hold the record open and we may submit questions in writing to our witnesses this morning.

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[1] The figures referred to were never received.

Senator REID. In fact, maybe we should do it that way, with your schedule being such as it is.

Senator PRYOR. I do have a couple of questions.

Mr. BANOVICH. I will provide these figures.

Senator PRYOR. We will welcome those figures.

Mr. Banovich, what would Senator Reid's bill have changed in your situation? How would it have changed the handling of this particular contract at Fallon?

Mr. BANOVICH. I believe if Senator Reid's bill had been in place at Fallon, Nevada, we would right now, like I say, based on the facts and figures of the last 5 years, I believe we would have shown a cost savings, whether it stayed in-house or whether it went contract. But by following the guidelines at Fallon, Nevada, in Senator Reid's bill, and having the input of the employees, because it is their job to try to get lean and mean to protect their jobs and to go up against the contractor just like any other bidder, which they were not given the opportunity to do.

They said they had, but they never really did. I believe that that one fact alone would have given us the edge to be able to talk to management and get management to understand that they were not here just to take their military personnel and run them down the road to another base at a tune of $5 million and then come back in and try to replace it with civil service or contractor employees at $5 million.

It would not have benefitted the military to do that at the time. They would have had to look at the dollar savings, instead of the manpower savings.

Senator PRYOR. On the Fallon contract, it does appear that there were cost overruns? I think that is agreed to.

Mr. BANOVICH. Yes, sir.

Senator PRYOR. If this contract had already returned the expected savings for Fallon and if the base had returned the expected savings originally anticipated to the U.S. Treasury, what would an agency do in order to fund the cost overrun? How do you fund a cost overrun if there were no savings and they were returned to the Treasury?

Mr. BANOVICH. Like we said here, probably ask for more appropriation funds, which defeats the purpose of the Circular A-76. Circular A-76 is a cost effective, supposedly lean and mean program. We would have had to go back out and have somebody pop some money from some special fund, which is what we are trying to do right now in Fallon, Nevada, to cover—pardon the expression—our butts because we are over and there is no doubt about it.

We have not saved the taxpayers at Fallon, Nevada, ten cents. The Navy needs more money right now, in Fiscal Year 1988, in Fallon, Nevada. This is for Fiscal Year 1988 now. Not 1989. They need more money in Fiscal Year 1988 because they went contract in Fallon, Nevada, right now.

Actually, if they had kept the contract even in-house they would have needed money, but not another $3 million. They only beat us by $488,000 and we are talking $2.5 to $3 million difference between us and the contractor right now that I can prove. So right now we would still have to.

But if they had left Fallon, Nevada, alone on the military side of the installation, just studied it, and cleaned themselves up in-house, we would have been turning the money back in for some other base that probably needed it. We could have helped support them.

Senator PRYOR. Let me shift, if I might, to Ms. Cooke. In the contractor's bid, Ms. Cooke, their stated cost of the contractor goes down each year. It that correct?

Ms. COOKE. That is right.

Senator PRYOR. Diminishes, each year.

Mr. BANOVICH. Not at Fallon, Nevada, sir.

Senator PRYOR. It goes up with you, right.

It is my understanding that one of the key reasons for the decrease each year is the contractor's proposal to use volunteers.

Did you know about this at the time of the contract? Did you bring this to the attention of the NOAA officials?

Ms. COOKE. No, we did not know. We did not know until the GAO report came out and we were absolutely astonished because it just does not make sense to figure that you are going to get people to volunteer, working particularly in that kind of a technical, scientific library.

I mentioned previously that public libraries often make use of volunteers, but it is with the understanding that they may be there for a few weeks for a very limited time, and they still require supervision and they require training, but they do not usually do the very specific things that would be tied into policy making or require very advanced technical training.

Senator PRYOR. We do have a Department of Labor letter dated December 7, 1987. That is pretty recent. It says that the use of volunteers in determining costs is illegal. I do not know if the contractors know that generally, but I think this certainly puts all of them on notice It is from a Department of Labor official who clearly states the use of volunteers in a service contract is a violation of the Service Contract Act.

We will make this a part of the record, to show its illegality.[1]

Ms. COOKE. We appreciate that.

Senator REID. Would the Chairman yield?

Senator PRYOR. Yes, Senator.

Senator REID. The interesting thing that Ms. Cooke pointed out, also, is the contract has already been let. She has asked some relief from someone, that it not become effective because it was, in effect——

Ms. COOKE. Senator, it has been announced, but they have not implemented it. There have been a number of difficulties, including the library being closed for asbestos cleanup and so they have not actually implemented it.

Senator REID. But in effect, the letting of the contract, the announcing the contract, was based upon illegal bids because everyone could compete if you could use volunteer labor.

Ms. COOKE. That is right. It is just totally unfair to the civil service.

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[1] See p. 161.

Senator PRYOR. Is it your own opinion that the proposed use of "volunteers" was to artifically bring the cost of the contract down?

Ms. COOKE. According to their assumption, but as I pointed out in my testimony, I think it is in direct violation of the Service Contract Act and it does need to be investigated.

Senator REID. You had better check Fallon to see if they have volunteer labor in that one.

Ms. COOKE. Because anybody could undercut any bid that the in-house workers would make on the basis of statings we are going to bring in volunteers.

Senator PRYOR. There is a lot of foot-in-the door philosophy that goes into these contracts. I have noticed that in the consulting contracts. Once you get that foot in the door, once the contract is let, then the opportunity for competitive bidding in the future, for others to get in on the action, is almost nonexistent.

Ms. COOKE. Senator, I am glad you mentioned the foot in the door because one of the other points I make on page five of my testimony adds a further complication to the problem, is that the contractor is a subsidiary of a foreign-owned company. We feel again that with this great push for competitiveness and trying to retain some edge that we have had in former days, that it is inappropriate, particularly with this particular library, that deals in what could be sensitive information given various situations, whether it is wartime or whatever.

But it also gives that company what amounts to insider information, so that they are able to have a competitive edge over every other commercial business that may want to get at it in the future.

Senator PRYOR. I think we will have to move on. We may send some other questions, in writing, to our witnesses. We are deeply appreciative of your coming.

Ms. Cooke, I might just add a personal note, if I may. We share a wonderful friendship with a mutual friend, Dr. Bessie Moore, and I might state that 20 years ago, when I was a freshman Member of the House, and that was when freshmen were seen but not heard. I had just been here a short time and I was very fearful about making a speech that early in my career.

And the only reason I rose to my feet and challenged my own chairman of the Appropriations Committee to add some money for libraries was because I looked up in the gallery and Dr. Bessie Moore was there. So I fear Dr. Moore a great deal more than I feared the chairman of our committee, I must say that.

And I made my speech. In fact, I think I won on the vote.

Ms. COOKE. You did, I was there, too.

Senator PRYOR. Thank you very much, all of you, for coming today, we appreciate it.

Mr. BANOVICH. Mr. Chairman, I would like to make one point on the galley at Fallon, Nevada. That was our main issue at Fallon. Right now, I can prove that they are——

Senator PRYOR. Volunteers.

Mr. BANOVICH. Volunteers, they are also working military personnel after hours at Fallon with the contractor. At least 30 percent of our people now are a military labor force working for the contractor on their own time. I have people in the community with-

out a job, and he is contending he does not have any openings, but yet he is rehiring military after hours.

Right now in the galley, they are proposing to shut the galley operation down to help offset the budget deficit at Fallon, yet that was a main issue. They could not ever shut it down because of the priority of it. But right now they are attempting to shut it down the operation.

Senator PRYOR. Thank you, Mr. Banovich. Thank you, Ms. Cooke.

I would like to call our second panel this morning. First we will hear from Mr. Mike LeFevre. Mr. LeFevre is an Instrument Technician at the Army's Dugway Proving Ground in Utah. He is vice president of his local union of the National Association of Government Employees. We welcome you, Mr. LeFevre.

Our next witness will be Mr. Ron Yaggie, a Contract Monitor and vice president of the Local National Federation of Federal Employees at the Chanute Air Force Base in Illinois. We welcome you, Mr. Yaggie.

We thank you both for coming a long distance. We appreciate your being here and look forward to your statement. We hope that you will understand our time constraint this morning. Your full statement will be placed in the record, if you would like to summarize. Please feel free to begin.

TESTIMONY OF MICHAEL LeFEVRE, INSTRUMENT TECHNICIAN, DUGWAY PROVING GROUND, DUGWAY, UT [1]

Mr. LEFEVRE. Thank you, Mr. Chairman and Senator Reid.

My name is Mike LeFevre, and I am an instrument maker for the U.S. Army at Dugway Proving Grounds in Utah. I am also the first vice president with NAGE Local R14–9, as you stated already.

I am appreciative of this opportunity to appear before the Subcommittee to relate to you our experiences with contracting out at Dugway Proving Grounds, which is a weapons testing facility located in an isolated part of Utah.

In 1981, we learned that the Army was considering contracting out the facilities engineering and family housing function at Dugway. During the cost analysis study, the union, affected employees and local management all worked very hard to develop a performance work statement which adequately reflected the full range of duties.

Unfortunately, on two occasions these statements were rejected by TECOM, the organizational superior to Dugway. Following the second rejection TECOM took the responsibility for drafting the performance work statement and submitted the final statement used in the bid process.

In May of 1982, the Army opened all bids and discovered that Hawthorne Aviation had the lowest bid. Hawthorne's bid was $4.2 million for a 5-year, fixed price contract. This figure was $161,000 lower than the in-house bid. The union immediately filed an appeal. We raised six major issues and for this morning's brevity, I will address only the question of a cost-of-living pay raise.

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[1] See p. 90 for Mr. LeFevre's prepared statement.

At the time Dugway developed its in-house bid it was required by OMB to estimate an fiscal year 1983 pay increase of 7 percent for the general schedule and 6 percent for the wage grade employees. The actual increase provided was only 4 percent, which decreased the Government's bid by $246,000 over the 5-year period, making it more cost effective to perform the function in-house.

The Government learned that the increase would be limited to 4 percent during the pendency of the union's appeal. The administrative appeal board, in rejecting the union's appeal, specifically recognized the accuracy of the union's pay raise figures and that in fact it was more cost effective to perform the function in-house.

Although afraid to take the responsibility to reverse the decision, the board did recommend that a final decision be delayed until a higher headquarters review was conducted.

The base commander, George A. Carruth, subsequently conducted his own study, and on August 11, 1982, published those results in a letter to his superiors indicating that the contract would directly cost the Government an additional $823,000 in the first 3 years alone.

In response to this letter, the U.S. Army Audit Agency conducted an audit of this action at Dugway. Its results confirmed that the 4-percent pay raise figure was accurate and that if used it resulted in a cost savings advantage to the in-house option.

Unfortunately for the taxpayers, the Army awarded the contract to Hawthorne.

The performance of the contractor was disastrous. Frequently Federal employees who had been reduced in rank were called on to perform their old duties when the contractor was unable or unwilling to perform these functions. Not all the blame for this shoddy performance lies with the contractor, however.

The performance work statement developed by TCOM turned out to be grossly incomplete. During the first year alone, the contract was modified over 100 times, each time costing the Government more money to accomplish duties previously performed by Federal employees for a fixed rate of pay.

Hawthorne's failure to perform under the contract was so serious that the contracting officer at Dugway responsible for administrating the contract on August 3, 1983, sent a letter to the contractor identifying five major areas in which Hawthorne was in breach and threatening to terminate the contract. The Department of the Army reacted immediately to this demand letter with an August 22, 1983, letter, advising discretion in enforcing the contract because of, and I am paraphrasing an Army official here, "the intense involvement of Congress."

The evidence of Hawthorne's subsequent performance suggests the Army would have been well advised to allow the contracting official to perform his job and been less concerned with the political implications of enforcing the terms of the contract.

As you will recall, the Army awarded a 5-year contract for $4.2 million. The actual expenditures under this contract were $8.6 million for 3 years of performance. This is greater than the cost of in-house performance over the same period or an unnecessary waste to the taxpayers of over $6 million.

Mr. Chairman, contracting out at Dugway disrupted a closely knit, productive family of workers who took great pride in our work as individuals and as a team. In our place, the Army put a private contractor who performed in a wholly inadequate manner not in keeping with the high standards we set for ourselves and at a cost dramatically greater.

What made this situation more troubling is that the Army was aware in advance that the contractor performance would be more costly and still elected to proceed to the contract.

Mr. Chairman, I thank you for the opportunity to appear and testify this morning and would attempt to answer any questions that you would like to ask.

Senator PRYOR. Mr. LeFevre, roughly how many people were displaced during this process?

Mr. LEFEVRE. At the time of the award of the contract, Mr. Chairman, there was I believe 91 employees on board in those functions. Out of that 91, I believe there was something in the neighborhood of 30 employees that elected to take discontinued service retirements and went to work for the contractor, a big number of them.

As a result of their jockeying around, also never really talked about before, the Army offered the union a deal that if they stopped their intense lobbying of Congress and putting out so much information to the local media, if they would stop this action, that they would accelerate a modernization program that was in the works for Dugway, in which they did increase the number of workers at Dugway.

Senator PRYOR. So you are stating here, before the Subcommittee, that this contract cost the taxpayers $823,800 over what it would have cost to perform the same work in-house. Is that basically the bottom line?

Mr. LEFEVRE. In effect, Mr. Chairman. There is also the question of the $200,000 that is the difference between the estimated pay increase and the actual pay increase that year, which brings the total to around $1 million more, at the outset of the contract.

In actual figures, the $8 million was for only 3 years of the contract performance and the contract was originally let for 5 years. They elected to bail out early on this contract because of the number of modifications. The words with Dugway were that it changed the whole posture, the whole content of the contract so much that they had to renegotiate it.

Senator PRYOR. Senator Reid.

Senator REID. Mr. Chairman, I think Mr. LeFevre's statement is excellent.

We here are used to talking about billions of dollars. Here you have a relatively small work force and we are talking about millions of dollars. But his point is well taken, because you magnify this as to what is going on all over the country and you get billions of dollars.

That is why, Mr. Chairman, on the second chart that I have, we are talking about in a period of 5 or 6 years, $4 billion that should be returned to this Government. The fact of the matter is it never would be because they would not contract out if there was accountability, or they would not do it very often.

I think, Mr. LeFevre, your statement has been excellent. It illustrates to me what took place at Hawthorne and is now taking place at Fallon. Somebody comes in and bids for $100 just to get, as the Chairman said, their foot in the door. Once their foot is in the door, they come back for all these cost overruns that the Government always gives them.

I do not know if there is ever an example where they came in and asked for more money and were turned down.

Mr. LEFEVRE. If I may, Mr. Chairman, as recently as last year when this contract was renegotiated, it was bandied about at Dugway whether the Government would rebid on this portion of Dugway's overall function. The final action was that Dugway did not bid on this action because they could not get any support from the Department of Army for the spaces needed to perform the duties. Even though the common knowledge at Dugway at the time was that we could do it cheaper in-house than contracting out.

Senator PRYOR. Mr. LeFevre, thank you. I may have a question or two to follow up with, if we have time.

Mr. Yaggie.

TESTIMONY OF RON YAGGIE, CONTRACT MONITOR, CHANUTE AIR FORCE BASE, IL [1]

Mr. YAGGIE. Thank you, Mr. Chairman. As you stated, my name is Ron Yaggie and I am from Chanute Air Force Base.

I appreciate the opportunity to present our point of view here.

We estimate that at Chanute Air Force Base we have had approximately $1 million in cost overruns since last year. Probably the greatest problem with the Office of Management and Budget Circular A-76 is the Performance Work Statements (PWS) used to reflect a function's workload.

It frequently fails to state accurately the actual amount of work performed. At Chanute, we have found the most frequent cause of incomplete work statements is the failure of the management study team to interview the employees.

This is a great advantage to the contractor whose bid is based on an understated PWS. When a contract is awarded, the contractor is obligated to perform only the amount of work specified in the PWS. If the agency needs to produce the same level of work performed by its former employees and the work is not specified in the PWS, it must pay the contractor for costly modifications.

For example, the grounds maintenance function at Chanute was contracted out in late February, 1986. The contractor's bid appeared less expensive and came to a total of $1,939,000 over a 2.5 year period. However, since the contractor has taken over, the activity has had a total of 19 amendments to the contract and instead of a savings of $204,000, as was indicated by the Government cost study, the contract has cost overruns of $234,000 and at this point is $30,000 in the hole.

A close examination of the amendments shows that the work which was added to the contract, should have been included in the original Performance Work Statement. Also, many of the Govern-

[1] See p. 95 for Mr. Yaggie's prepared statement.

ment workers are now in lower grade jobs at their previous higher pay; for example, a $25,000 a year employee may now be in a $12,000 position, drawing the same pay indefinitely.

If the contract had stayed in-house, that cost would not have been necessary.

Particularly disturbing is the information included in amendment number seven of this contract, which states "For the period March 1, 1986 through September 30, 1986—" the first six months of the contract—"maintenance work load exceeded government estimate by 80 percent." As a result of negotiation, the contractor was paid an additional $50,000.

Clearly, Mr. Chairman, this gross error by the management study team resulted in the decision to perform the function by contractor and paved the way for additional costly contract modifications.

Another contract we have had at Chanute was the furnishing's management function which also contained errors in the workload estimation leading to a cost increase of approximately $150,000.

Ironically, since the function is contracted out, it is virtually impossible to return it to in-house performance, even when the cost overruns are as outrageous as those in this case. Officials at Chanute informed us that they will not revisit a contract for cost overruns unless directed to do so by Air Training Command (ATC). Since it is not in the activity's best interest to acknowledge to the command that contracting mistakes have been made, ATC rarely requests reevaluation.

We have also experienced serious problems with contractors' failure to perform functions after award. For example, part of our base commissary was contracted out last year and the contractor was unable to pay his payroll. Currently, the Government is paying the workers on a Government payroll in order to keep the commissary open.

Senator PRYOR. Mr. Yaggie, may I ask you a couple of questions? One, are you stating that the bottom line of this contract is that there was a 77 percent cost overrun, as compared to the original bid?

Mr. YAGGIE. Eighty percent, Mr. Chairman.

Senator PRYOR. Eighty percent, all right.

Second, how would Senator Reid's bill have affected this cost overrun or affected this contract had it been the law at the time this contract was awarded?

Mr. YAGGIE. In my opinion, and I was involved in the reevaluation of this contract when the general wanted to know why the work could not be done, if your bill had been legislation at that time, the work would not have gotten done because the Air Force would not have been able to pay for it.

Consequently, they would probably eventually had to go back in-house in order to get the work done for that amount of money.

Senator PRYOR. The in-house bid originally was just a little bit more than the contractor's bid, is this correct?

Mr. YAGGIE. Yes, sir, there was only a $47,000 difference.

Senator PRYOR. And then there were subsequent modifications?

Mr. YAGGIE. Yes, Mr. Chairman.

Senator PRYOR. In fact, 14 modifications through July of 1987, is that correct?

Mr. YAGGIE. From the period of April 1, 1986 to July 1, 1987.

Senator PRYOR. Is it normal for this many of modifications to take place during the life of a particular contract?

Mr. YAGGIE. I have dealt with Federal contracts on behalf of contractors and the Federal Government and it has not been my experience to see anything of this nature. Normally, if you have two or three amendments to a contract, that is unusual.

Senator PRYOR. Does the original contractor still have the contract there at the base? Is this contract still a viable contract?

Mr. YAGGIE. Well, the contractor is still performing the work and amendments are still being issued. I received the first 14 amendments in July, and since that time they have had five additional amendments and I just got those prior to coming here to testify.

We are trying to get some of our local representatives to put pressure on Air Training Command to reevaluate this contract and bring it back in-house. So far we have been unsuccessful.

If I could just bring up one point, the Air Force just made the decision to contract out the Consolidated Maintenance Squadron at Chanute, which has 185 personnel, 67 civilian and 118 military. The low bidder, Raytheon Support Services, was $6 million cheaper than the Government estimate, indicating that if your bill becomes legislation $6 million would then be turned into the general fund by Chanute.

However, the other corporation who bid on this contract bid $20 million. Raytheon's bid was $10 million. The Government estimate was $16 million. So we find it unlikely that Raytheon will be able to do the work for half of the other bidder or 40 percent less than what it cost the Government to do the work.

We have requested the Government, the office of GAO, to look into this matter. I think we can prove a case of conflict of interest and unfair advantage here, but in the case with Consolidated Maintenance Squadron, we just feel that it is going to be another situation where the contractor bid it for half of the realistic cost. And then later we are going to have pay through the nose for it.

Senator PRYOR. I may have some additional questions.

Would there be any further closing statement from Mr. LeFevre or Mr. Yaggie? We are very indebted to both of you for coming here today. I think that the types of contracts that you have brought before the Subcommittee exemplify many of the problems that we have in the contracting out area.

I have seen this, for example, in my own State, at the Pine Brook Arsenal. We have many such problems that arise similar to this. You have very succinctly and very precisely gotten to the basis of the problem and you have stated this very clearly in a short period of time. For that, we are very indebted.

Ladies and gentlemen, the hearing is now adjourned. Thank you.

[Whereupon, at 11:10 a.m., the Subcommittee adjourned to reconvene at the call of the Chair.]

COMMERCIAL ACTIVITIES CONTRACTING ACT OF 1987

WEDNESDAY, MARCH 30, 1988

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in room SD-342, Dirksen Senate Office Building, Hon. David H. Pryor, Chairman of the Subcommittee, presiding.

Present: Senators Pryor, Stevens, Boren, and Representative Skelton.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Gentlemen, the Subcommittee will come to order. I have a very short statement. I know that Senator Boren, our first witness, is involved in the Trade Conference which is meeting at this moment. Senator Boren, would it alleviate your schedule to let you go ahead with your statement?

Senator BOREN. Mr. Chairman, please go ahead with your own statement.

Senator PRYOR. I will just take a short time, then.

This is the Subcommittee's second day of hearings to review the effectiveness of the Government's current policies and practices on contracting out and to discuss Senator Reid's bill, S. 909, designed to create greater efficiencies than currently exist in this area.

According to the Congressional Budget Office (CBO) and the President's Office of Management and Budget (OMB), billions of dollars have been saved in recent years by contracting out. Unfortunately, these so-called savings are very elusive, at the very best. Few, if any, Government officials can show money in-hand as a consequence of contracting out an activity previously performed by Government employees. When they can show that there was actual money saved, we often find that they wind up spending the money on some other project for which funds may not have been appropriated.

In December, for example, we heard from employee representatives who vividly outlined situations that did not, in our view, fully meet the cost and efficiency goals of the A-76 Circular. Today we will hear from two Members of Congress, Senator David Boren of Oklahoma, and Congressman Ike Skelton of Missouri, who have

similar concerns about contracting out actions in their respective States.

We will also hear from OMB, which is responsible for the implementation of the Circular, and from the Department of Defense, which is responsible for a majority of the contracting out activity of the Federal Government.

Carefully examining the A-76 process is particularly important given the urgency of getting the Federal budget deficit under control. I believe that contracting out, done properly, might save the Government some money and increase efficiency. However, I am very concerned by cases such as those this Subcommittee heard about last December, which indicate that the Government can actually waste money in a poorly-administered contracting out situation.

That is why I am a cosponsor of S. 909. S. 909 would require all savings generated by contracting out to be identified and returned to the Treasury for deficit reduction. These savings belong to the taxpayers and in the national Treasury.

I have also introduced S. 2188 which amends the Federal Employees Retirement System Act of 1986. This legislation would have the practical effect of requiring contractors and Federal employees to include all retirement cost in contract bids. This change was suggested by OMB. It was seconded by the General Accounting Office, GAO. I am very hopeful that this will level the playing field for Federal employees in competing for contracts.

Witnesses today will also comment on a proposal relating to contracting out bid protests. The Competition in Contracting Act of 1984 gave private bidders the right to challenge a questionable contract decision before the GAO. By protesting bad contracts or bids, contractors today help police the contracting system for fraud and waste. The idea I am requesting comments on today, would give the Federal employees affected by a contracting decision the same appeal rights at the General Accounting Office.

There are many examples of contractors winning with bids that underestimate the actual contract health cost. Our last hearing, for example, uncovered a private contractor that doubled the cost of a function from $789,000 to $1.4 million. In another case, we learned that a potential contractor was able to submit a low bid for operating a Government library because he assumed the use of volunteer labor, which the Department of Labor found to be illegal.

These types of problems can be caused by an incomplete performance work statement written by the Government by inadequate A-76 guidelines, by the ignorance of the contractor, or by intentional fraud. Whatever the reasons, the employees involved are well suited to make certain that a bad contract is not awarded.

In a recent contracting out study of 150 jobs at the Pine Bluff Arsenal in Arkansas, a poorly defined performance work statement was a major reason why the Arsenal did not receive any bids from private contractors. These contractors were simply not able to compile any bids because they were not sure of what the job actually entailed. Pine Bluff employees are continuing to work with the base command to try to define the jobs that need to be done.

This is an excellent example of ways in which involving Federal employees may well help save the Government from yet another

costly contracting out mistake. Let me emphasize as we begin this morning, these changes to the currently A–76 process are not aimed at killing the program. They are intended rather to improve the program and the process to ensure that expected savings become actual savings and that the quality of our Government is enhanced and not diminished.

Our witnesses today have been asked to address these issues. I look forward to hearing their comments and their suggestions.

Congressman Skelton, if you would like to appear at the witness table with Senator Boren, we would welcome your presence. I might also say to Senator Boren and Congressman Skelton, that if after your statement, if time permits, you are more than welcome to sit at the dais and ask any question of the witnesses. Senator Boren, thank you.

TESTIMONY OF HON DAVID L. BOREN, U.S. SENATOR FROM THE STATE OF OKLAHOMA [1]

Senator BOREN. Thank you very much, Mr. Chairman. I am privileged to be here this morning with my good cousin, Congressman Ike Skelton of Missouri. We keep that secret. He keeps it secret, I think. And to have this opportunity to appear before you and I appreciate your allowing me to proceed. I do have to return to the Trade Conference which is ongoing as to this moment. I appreciate very much and am in full agreement with the opening remarks that you made. I also want to commend you for calling this hearing so that we can thoroughly examine the way in which the A–76 process is being applied. I appreciate the opportunity to appear to share with you some of my concerns about the regulations of Circular A–76 which govern contracting out of Government services.

This Subcommitee knows contracting out of Government services, when less costly, has been a policy of the United States Government for 30 years. I know of many examples where contracting out is saving the Government money. But I am here today because of certain inequities to the Federal employees in the contracting process, which bring into question whether there are actual savings in certain circumstances, as you have indicated in your opening statement.

I endorse, and have cosponsored, S. 909, the legislation to require any savings from contracting out to be returned to the Treasury, introduced by Senator Reid, cosponsored by Senator Sarbanes and of course, by the distinguished Chairman of this Subcommittee.

I would caution that the legislation spell out exactly how to assess these savings. There is quite a difference between the cost comparison on which bids are based and actual cost to the Government. Presently, it is difficult to obtain a comprehensive accounting of a particular contract which would include not only the payments to the contractor, but other expenses, such as early retirement, retain pay or other cost impacts on the installation.

The Subcommittee has also asked that I comment on the draft proposal to allow Federal employees as a unit the right of appeal to the General Accounting Office. It seems to me that it would be eq-

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[1] See p. 104 for Senator Boren's prepared statement.

uitable to extend the same opportunity to the Federal employees that the private contractors enjoy. At this juncture, Federal employees can appeal only the line items on their contract. For instance, many inequities, such as outdated wage schedules which I will address later, are presently not considered by the appeals process. So I strongly support the right of the Federal employees to have the same access to the appeals process.

I understand that at least one of the witnesses today is going to argue that this is unnecessary because the members can appeal to their own representatives in Congress. Unfortunately, I have had a number to these appeals. But one Congressman or one Senator cannot overrule the findings that are made in this process. So I would have to say that I think that is a poor excuse for not giving the Federal employees the rights to which they're entitled.

Several months ago a new contract involving the Directorate of Logistics at Fort Sill was announced, and I was asked by the Federal employees to look into possible inequities in the cost comparison process. My examination of that case study is one of the reasons why I am here today, Mr. Chairman.

The following is a summary of the findings from the several meetings the Oklahoma Delegation has held with officials from Department of the Army, the Office of the Secretary of Defense and the Office of Management and Budget.

For more than 7 years the Department of Logistics, Federal employees, at Fort Sill have been under the strain of a contracting out study since the announcement was first made in November of 1980. In addition, more than 3 years of delay occurred until the current contract award was announced in June 1987. We went through nearly a year for a Small Business Administration protest on the size of a solicitation. Another 11 months while the Army worked an issue of property accountability. A 7-month delay took place for the Army work statement description. And lastly, 7 more months for regulations to be promulgated as a result of the Federal Employees Retirement System Act.

Let me at this time outline a few of the discrepancies in the cost comparison process as it pertained to the Directorate of Logistics contract. First, when an award fee contract is used, the cost of the award fee is not counted against the contractor, because he must meet certain standards to receive the actual money, even though it is anticipated that the award fee will be paid for satisfactory performance. The GAO found that, in this case, this may have understated the cost of the private contract by as much as $2.7 million.

Second, in response to the enactment of the new Federal Employees Retirement System (FERS) which precluded the inclusion of the Federal Employers Social Security Thrift Plan contributions from the cost comparison, OMB ruled that the contractor should not include those contributions. Since the Government does not pay Social Security on employees under the Civil Service Retirement System, this impacted again, according to the GAO, against the Federal employees by approximately $1.7 million.

I commend you, Mr. Chairman, for introducing S. 2188, which is very similar to S. 2194, which has also been introduced by Mr. Nickles, Mr. Ford, Mr. Wirth, Mr. Armstrong and myself. This amendment to Section 307 of the FERS Act will correct the recog-

nized inequity. Since OMB has requested this remedy as well, I would urge speedy action by the Committee and by the Senate on your proposal.

Third, the Service Contract Act requires the payment of prevailing wages in the locality where the work by contract is performed. In the cost comparison, the DOL Federal employees had to inflate personnel costs 3 percent over the 1986 Federal Wage System general schedules for 1987, and an additional 2 percent for the first contract year. The contractor in the cost comparison, however, used the available 1986 wage scale reflecting 1985 wages. This is supposed to be a fair comparison. We have all the escalations on the Federal side and none of the escalations on the private side. It is estimated that this also cost the Federal employees, in terms of their own proposal, a $1.9 million disadvantage. So this is another inequity in the way this contract was awarded.

I am skipping over part of this, Mr. Chairman, in the interest of time, and I will submit my full statement for the record.

The cost of contract administration is counted against the contractor in cost comparisons. Fort Sill requested 32 Federal employees to oversee the contract, which was decreased to 16 by Headquarters. Yet, a letter dated November 9, 1987, granted 7 additional employees for 2 years. But it stated that these 7 additional employees could not be charged to the contractor because Headquarters has established the base line at 16 and will not entertain an increase. In other words, they ordered 7 more people put on the Federal payroll to supervise the contract and then said that you cannot count those 7 against the contractor in coming up with your estimate of the cost savings.

In addition, when a conversion to the private sector occurs, the Federal employees who leave Government service receive only the contribution they personally made to the retirement system. Someone who has tenure of many years is entitled to no interest on these funds. This is extremely unfair, and I believe that Congress should also enact legislation to address this issue.

Had the more accurate new retirement cost factors been included in the Directorate of Logistics bid at Fort Sill, it would have subtracted $1.2 million from the DOL employees' bid. The new Department of Labor wage scale, which I mentioned, would have added $1.9 million to the contractor's bid. The inclusion of Social Security and thrift plan cost, which I mentioned, would have benefited the DOL employees by $1.7 million. Without the $2.7 million award fee or additional installation costs, this still totals $4.8 million in favor of the Federal employees. After the appeals process, however, the contractor won by $2.7 million over 5 years in the cost comparison analysis. To use an old saying, it just shows what you can do with figures if you are intent on the result before you begin, Mr. Chairman. And that is exactly what clearly happened in this case.

I cannot overestimate the strength with which the entire Oklahoma delegation felt that a severe injustice was done in this case. To conclude, I do believe that the Department of the Army followed the rules and regulations and by my testimony, I do not intend to criticize the Army or the contractor which was selected. If they were going to contract out this function, they picked the best possible contractor. I do, however, have sincere doubts that at the end of

this contract, with an accurate accounting of the total cost, that there will be any savings whatsoever to the American taxpayer. In fact, it is likely to end up costing more.

One last point I would like to make is that Congress controls the numbers in civilian strength, but not in contract personnel. As a result, in the 1987 Fiscal Year Defense Authorization bill, a DOD report was called for which stated that from 1979 to 1989 DOD contract work years will have grown by 151 percent while civilian end strength increases by 13.6 percent. It is very clear, Mr. Chairman, that in many cases it is not the dollar savings to the taxpayers that are driving this calculation. It is an effort to fudge the figures to try to indicate that the civilian work force on these bases is smaller than it really is by resorting to contracting out where these numbers are not counted against overall personnel ceilings.

I am convinced that the present cost comparison process does not accurately portray real dollar expenditure. I am presently paying close attention to another contracting process under the same regulations at Fort Sill which affects another 500 employees and their families. I would hope that this Subcommittee would review these issues and report appropriate measures to the Senate to ensure that contracting out activities do, in real terms, save the American taxpayers money.

I hope we will do so, Mr. Chairman, before it is too late to help these additional 500 employees and their families at Fort Sill. Because, as I have indicated, the appeal to the Members of Congress, even though the entire delegation from our State was united in its strong feeling that an injustice was done, simply does not give the employees adequate remedy. There must be some real substantive changes made in the way that this process is now currently being misapplied.

Thank you very much for this opportunity.

Senator PRYOR. Senator Boren, you have been of real service in eloquently and painstakingly bringing this case to the attention of this Subcommittee. I think this is a classic example of our Government claiming that they are saving the United States taxpayers money. The matter at Fort Sill is a classic case. I think Congressman Skelton has another case that is going to be of equal import to the Subcommittee.

Did the Army ever tell you, Senator Boren, or any member of the delegation from Oklahoma, how many dollars were going to be saved as a result of this contract?

Senator BOREN. No, sir; we never had an actual figure on actual savings. All we were able to get was a figure in terms of what they contended was going to be done under the formula. We were never able to get an actual savings figure out of them. They did seem to have some sympathy towards the fact that part of this formula was not being applied in a fair way. But they indicated to us that they were simply caught in the situation of the way the regulations were being imposed upon them from the Office of Management and Budget.

Very interesting, the Office of Management and Budget also indicates that they do not think they can make changes with a case so far along as this was when we had our last discussions, because they were afraid that it might set precedents elsewhere that would

prevent contracting out in other situations. So, it is the old situation that we have been in so many times of one agency of Government pointing the finger at the other agency of Government. Meanwhile, a good corp of professional employees have their lives and their futures disrupted by this kind of fickle process.

Senator PRYOR. We will have some more bad news for you shortly. We will be hearing from witnesses from OMB and Department of Defense. They will tell us that Congress should not interfere in these matters. We want to make them return the savings to the Treasury. They are going to say that is not the right thing. They want to use these so-called savings for incentives.

Now, I do not know what these incentives are; I do not know whether that would be sending someone off for a Hawaiian vacation or buying a new jet plane or a pay increase or what. But we are going to ask OMB and DOD about this, and ask them why they would object to sending this money, if they are saving money, back to the United States Treasury where it belongs.

Senator BOREN. Mr. Chairman, I strongly support it. That is the way to get an honest accounting. I am afraid we are going to be very disappointed when we find out how many actual dollars of savings are being transferred. I certainly would rather see those of us in Congress have the opportunity to determine where bonuses and incentives should be paid. I would not put on the list of those that would be eligible for consideration those who have mishandled the contracting out proposal and misadministered this in terms of the Fort Sill case.

Senator PRYOR. Senator Boren, you made reference to your kinship to the gentleman on your left, Congressman Skelton. I will make reference to another one of your kin, our friend, Jim Boren, who wrote the great book on the bureaucracy, "When In Doubt Mumble." We are hopeful that we will not see a lot of mumbing at the witness table by the OMB and DOD witnesses, but I would not be surprised.

Senator BOREN. I wish you good luck, Mr. Chairman. You know the second part of my cousin's book. The first sentence of his principles is, when in doubt, mumble and the second is, when in trouble, delegate. It seems to me that, that is what we have seen in the second case, too. They have delegated our responsiblity for whom it is that is mishandling this program every time you try to put your finger on it.

Senator PRYOR. You have made a great contribution, Senator Boren, to this Subcommittee.

Senator BOREN. Thank you very much.

Senator PRYOR. Congressman Ike Skelton, we welcome you before our Subcommittee this morning and we look forward to your statement. You may proceed.

TESTIMONY OF HON. IKE SKELTON, A REPRESENATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Congressman SKELTON. Thank you so much, Senator. I listened with great interest to Senator Boren's testimony. I, of course, wholeheartedly support his comments and I have my own horror

story to relate to you as well. Mr. Chairman, I have an extensive statement which I would offer for the record.[1]

Senator PRYOR. It will be printed at the appropriate place in the record, Congressman Skelton.

Congressman SKELTON. I would like to summarize, if I may. First, Mr. Chairman, we hear these days so much, and particularly in political talk, the phrase, the "level playing field." If there is ever a case where there is not a level playing field, it is in the area which we are discussing today.

First, I thank you for the opportunity to discuss the issue of contracting out of Government functions. I believe that we need more Congressional scrutiny and I would applaud your efforts in this regard as opposed to those who will testify later that we should not have Congressional scrutiny of the Reagan administration policy of privatizing the Federal Government.

Mr. Chairman, I am concerned about this. Under the guise, under the guise of saving money there is a concerted intent to privatize much of the Federal Government. It is not saving money, it is privatizing, taking it away from those who have been working there long, hard and well for so many years.

Mr. Chairman, the experience of Fort Leonard Wood in Missouri, an Army post which is in the 4th District that I represent, shows the problems with the whole policy of contracting out. The program is supposed to save money. But the way it was implemented it often costs money. The studies that determine whether to contract out sometimes take so long, that by the time they are done, the results are obsolete. One of the studies at Fort Leonard Wood took 7 years to complete. The other problem is that the studies do not take into account all of the work that is done by the current employees. They also leave out some of the contractor's cost for retirement benefits and they calculate their wage scales from outdated statistics. Senator Boren, as you recall, mentioned this item.

When all of the cost finally come out in the contract the Government often ends up with losing money instead of saving it. At Ft. Belvoir, Virginia, a similar contract more than doubled in cost in the first year alone. When the employees at Fort Leonard Wood, Missouri, tried to point out these flaws, they found that they were given only 15 days to appeal. Most of the problems they found, the problems that I just mentioned, are not considered legitimate grounds for an appeal. Then the Appeal Board came under strong political pressure from the administration to deny the appeal.

Earlier, when one of the contractors appealed the ruling, the process had favored him. A contract that he had lost to the current employees. He got the GAO to look into the matter and he won on that appeal.

This process is not only biased, it is also completely insensitive to the workers. The workers are kept in limbo, uninformed and wondering, for years often, while studies are done and the bids are considered. They know that the appeal is stacked against them and the competition is unfair. So they come away convinced that they have been treated poorly and they lost their jobs unfairly and that

[1] See p. 112.

the Government may not even save any money in the end. One result is that work quality suffers.

Mr. Chairman, Fort Leonard Wood employees, who are about to be laid off right now, won an award last year for excellence in their work. It was the number one Army installation in the U.S. Army. And yet, these people are being laid off. It would be hard to blame them, if after having been treated so shabbily, those who are hired by the contractor lose some of their enthusiasm for doing a good job.

Meanwhile, the administration is ignoring the clearly stated intent of recent laws, last year's Nichols Amendment. My colleague from the House introduced this amendment to the DOD Authorization Act, directing the military departments to let the base commanders decide which function should be studied for contracting out. The problem being addressed, as my distinguished colleague, Bill Nichols, clearly stated, was that in his words, ". . . all too often higher headquarters have dictated the pace and scope of cost comparisons to meet some arbitrary Pentagon deadlines." The administration's response was that the President released an Executive Order directing that the contracting out program should be speeded up.

So when this issue came about, I went over to see the Secretary of the Army and posed the problem to him and he at that time—this was, I believe in January or sometime of this year—showed me a November 19, directive from the White House, of course, from OMB, stating that there had to be some 8,450 jobs yet ahead for possible contracting out in the Army. Almost three times as many as it's annual total in the last few years. It is obvious that the administration is flouting the intent of the law, forcing more contracting out than the commanders probably want, and I believe it is time for Congress to act on this issue.

Mr. Chairman, I appreciate your attention to this. It is no small concern. We in this country basically feel that a person who works hard, is honest, does an excellent job in what he is assigned to do should be rewarded by continuing on that job if the job is still available. And, of course, we find people who have done an excellent job, worked hard for many years. We find people who are in the second and third generations working for the Army at Fort Leonard Wood. And yet, because of this contracting out policy, which is unfair at best, they lose their jobs and it is a sad chapter for the military, Mr. Chairman, in our country.

Thank you for hearing me out of this. We feel in Missouri, very, very, strongly about it.

Senator PRYOR. Congressman Skelton, you, like Senator Boren, have presented the Subcommittee with a classic case once again on the so-called savings from contracting out. We are in your debt for doing this and we thank you very much. It appears that the contract bid at Fort Leonard Wood was $37 million for the services of the private contractor. The in-house bid was $48 million, so it looks like the Government claimed an $11 million savings. I am not sure that there is a savings; however, we will get to that in a moment. Do you know what happened to this $11 million?

Congressman SKELTON. I have absolutely no idea.

Senator PRYOR. They left it out there on the table?

Congressman SKELTON. I have absolutely no idea.

Senator PRYOR. We are going to try to find it.

Congressman SKELTON. I seriously question if there was a savings at all because of the items that both Senator Boren and I have mentioned, the disparity between comparing one and comparing the other, it is apples and oranges. I am not sure there——

Senator PRYOR. If I am not mistaken, and correct me if I am wrong, I believe there was an independent audit, of this contract. It is my understanding that the independent audit cited a figure $25 million more than the contractor bid that was accepted by the Government.

Congressman SKELTON. That is right.

Senator PRYOR. In other words, we are going to add another $25 million to the contract cost. So we will not see a savings; we will see a net loss.

Congressman SKELTON. Not at all. Not at all. And when you see figures like that, such as the audit to which you describe, it is most disheartening to the civilian employees who have, for instances in some cases, their whole life into this type of work. I again, thank you for the efforts that this Subcommittee is making.

Senator PRYOR. Congressman Skelton, thank you. I think OMB is going to state later this morning that Members of Congress serve as an informal appeals route for Federal employees and their unions. I do not know about your office, but in my office, we can only go so far. We can only bring these matters to the attention of the agency. We strongly feel that we have got to have a more concrete, definite appeals system for the Federal employees, like the one available to private contractors.

Congressman SKELTON. Well that is what I am doing here today. Bringing this appeal through the proper channels so that we can correct the law so that we can have that so-called level playing field. So that the people who are working there will have the opportunity to keep their jobs and to continue the excellent work that they have been doing. That is all they want to do.

Senator PRYOR. Well the 497 employees at Ford Leonard Wood who are about to lose their jobs or be down-graded, I know, are in your debt, as is this Subcommittee, Congressman Skelton.

Congressman SKELTON. As the fellow says, we are trying as hard as we can. This is the proper way to help them through legislation. I again thank you, sir.

Senator PRYOR. Thank you very much. We will now hear from Mr. Robert P. Bedell, the Administrator, Office of the Procurement Policy Office, OMB; and Mr. Douglas Hansen, Director of Installation Services, Office of the Secretary of Defense. We appreciate both of you coming this morning. We look forward to your statement. You may read your entire statement if you wish or you may summarize it and the full text of the statement will be placed in the record.

Mr. Bedell, we will call on you first.

TESTIMONY OF ROBERT P. BEDELL, ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET, ACCOMPANIED BY ALLAN BURMAN, PH.D., ADMINISTRATOR, AND DAVID MUZIO, DEPUTY ASSOCIATE ADMINISTRATOR

Mr. BEDELL. Thank you, sir. If I may, I would like to expand the panel with a couple of my assistants here.

Senator PRYOR. Yes.

Mr. BEDELL. Dr. Allan Burman is on my immediate left.

Senator PRYOR. Dr. Burman.

Mr. BEDELL. He is the Deputy Administrator of the Office of Federal Procurement Policy; Mr. David Muzio is the Deputy Associate Administrator at OFPP.

Senator PRYOR. Good, we welcome both of you this morning.

Mr. BEDELL. I would like to introduce if I may, my prepared remarks for the record [1] and just summarize for a second.

Senator PRYOR. They will be placed in the record. Thank you.

Mr. BEDELL. I very much agree with most of the points made in your opening remarks, especially, your commitment to make this process work better and to be better. We agree with that wholeheartedly. Indeed, we are frustrated in carrying out this program by the resistance that it seems to engender at every turn. Resistance from the employees, resistance from the managers of these programs, resistance from Congress in terms of passing statutes which include contracting out activities. There is a list of some 25-30 statutes that prevent studies of one project or another.

While we think the potential is there, and I think you indicated in your opening remarks that you do too, for saving a good bit of money and acquiring the same level of services for the Federal Government, I must tell you it is a very frustrating program to try to administer with as much opposition as there is to it. So anything that you can suggest that will make this a better program, one that is less resisted by all levels, we are certainly interested in that. Indeed, over the years we have tried to graft different provisions onto OMB Circular A-76 to make it so. I wish I could tell you that we have solved all those problems, but you, Senator Boren and Congressman Skelton have all indicated that there are a lot of problems left. We too see those. We spent a good bit of time with Senator Boren on the Fort Sill contract in particular.

But the potential is enormous as you indicated. Right now there are approximately 750,000 Federal employees, not uniformed employees, Federal civilian employees who are carrying out commercial activities in the Executive Branch. That is not counting any of the approximately 800,000 employees of the Postal Service. All of those activities could be, according to our estimates, carried out by the private sector. It has been the policy of the Executive Branch since 1955, as Senator Boren indicated, that commercial activities be acquired from the private sector except in the instances where national security interests or other interests override, or it is an essential Governmental function. Many of the functions of Government, of course, are.

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[1] See p. 118.

That was President Eisenhower's command back in 1955. As a matter of fact, he was forced into it by Congress who was concerned about the growth in the Executive Branch and wanted more commercial activities to be carried out by the private sector. I wish I could say that since 1955 the Executive Branch's experience with the program is that we have substantially reduced the number of commercial activities being performed by the Executive Branch. Unfortunately, while I do not have the hard numbers, I suspect that the numbers have drastically increased since that time. But the potential is enormous. The estimates that GAO surveyed on this program range from about $2 billion in potential annual savings up to, I think they said, as high as $5 billion, if we were to simply study those commercial activities.

The history of this program is that each time we perform such a study we save approximately 30 percent of the cost of doing those functions. Obviously, at a time when budget constraints are what they are, to get what we hope is the same, and believe is the same, level of service for savings which have been documented time and time again is something we ought to pursue. Now, are these savings real? Can we put them in our pocket? Can we count them easily? The answer is that they are not easy to count. For the simple matter that they are taken away from the agency in a fashion that allows the agency to apply those savings for other activities for which they are authorized to spend funds. So there never has been a hard accounting of these A–76 savings. This year was the first year, under a new Executive Order that the President issued last November, Executive Order 12615, where we will have a much better handle on the dollars and——

Senator PRYOR. Excuse me, why did we wait 7 years to start monitoring these funds?

Mr. BEDELL. Well, the monitoring was not as important as having the study goals.

Senator PRYOR. What do you mean, study goal?

Mr. BEDELL. Well——

Senator PRYOR. You are talking a lot of jargon here now, let's cut out all this and just talk turkey.

Mr. BEDELL. Well, we sometimes fall into jargon, so please correct me.

Senator PRYOR. Now, what about a study goal, what is that?

Mr. BEDELL. Study goals are negotiated between the Office of Management and Budget and the department or agency concerned on an annual basis to have them say how many positions that are currently being carried out by Government employees will be studied during the year. Those we refer to as study goals and we accumulate those and we have study goals for the entire Government through that process, that is what I meant by study goals.

Senator PRYOR. Have you estimated what the savings have accrued from contracting out these services since 1981?

Mr. BEDELL. I am not sure what it is for contracting out, but for studying those goals, I think the cumulative effect has been over $2 billion, is that right?

Senator PRYOR. You mean just studying all this, you can make money off of that?

Mr. BEDELL. Yes, sir. The study involves a competition between the private sector and the businesses who would wish to perform that janitorial service or food service operation or engine overhaul or whatever it may be and the Government unit on the other side. The competition permits the Government to compete with the private sector. That is a change from President Eisenhower's original proposal. He said none of this competition business, we do not want the Executive Branch, the Federal Government, doing commercial services. That has evolved in efforts to make it fair, frankly.

Senator PRYOR. Okay, so let——

Mr. BEDELL. In this competition process, each time that competition takes place, costs to the Government go down by an average of about 30 percent.

Senator PRYOR. All right, so let's take your figure of $2 billion in 7 years. What has happened to those saving?

Mr. BEDELL. Savings——

Senator PRYOR. What happens to those dollars. Do they go back to the Treasury?

Mr. BEDELL. In a way they do. But, in the year in which those savings occur, the agency that makes the study, that contracts something out or reduces the Government's cost of performing the service has those funds in essence freed up to be used for whatever purposes Congress has authorized.

Senator PRYOR. Now this is where I want to go. What monitoring device is used over those funds?

Mr. BEDELL. You mean to make sure that they are being——

Senator PRYOR. What oversight?

Mr. BEDELL. Let me ask for a clarification, if I may?

Senator PRYOR. You are talking about freeing up extra dollars that are classified as savings.

Mr. BEDELL. Right.

Senator PRYOR. They do not go back to the Treasury. They stay within the agency. Let's talk about DOD in this case, since we will hear from them in a moment.

Mr. BEDELL. Yes.

Senator PRYOR. Say you have allegedly saved $6 million on a contract. So you have $6 million to the good. What happens to that $6 million?

Mr. BEDELL. Well the $6 million would have been appropriated by Congress for a particular activity. Those funds may be used for that particular activity. They cannot be used for things that Congress did not authorize those funds to be spent for. But they may be used for the activity for which Congress appropriated those funds.

Senator PRYOR. So what we have is really, accounting wise, an appropriations overrun that accumulates. We have appropriated $6 million, let's say to DOD, than they have requested, because they have saved money through a contract. Is this correct?

Mr. BEDELL. That is not how I look at it. Congress enacts and the President signs an appropriation to make a certain amount of money available to carry out a particular function or to meet a need the Government has and the Congress and the President agree on. If the agency figures out, and A–76 is one of the ways that they can do so, a more inexpensive way of carrying out that

same service they can use the funds that they did not spend in meeting that need or that service to further the authorized purposes of that particular program.

Senator PRYOR. Does OMB monitor those expenditures?

Mr. BEDELL. Well, we do not go and check each dollar to see if each dollar was authorized by law. Frankly, we rely on the agencies to make sure that they are spending funds for the purposes authorized.

Senator PRYOR. Do they give bonuses, for example, to employees with this money?

Mr. BEDELL. Not that I am aware of.

Senator PRYOR. Do they buy new computers with this money?

Mr. BEDELL. Again, what they can spend those funds for are what they are authorized to spend the funds for. If they are spending funds for other purposes, if they are taking money that they have saved by contracting out a food service operation in some post camp or station and buy a new car with it, I would seriously doubt that they were authorized when the funds were made available to spend money on a new car. If they were doing that, that is inappropriate. But if they were appropriated $100 million to meet food service obligations and they can figure out a way of doing it cheaper, the money that they spend in that year they can use for the purposes to carry out the food service operation.

Senator PRYOR. Congressman Skelton just came forward with the story of Fort Leonard Wood, Missouri.

Mr. BEDELL. Right, I have been there.

Senator PRYOR. The Federal employees bid $48 million to perform a particular service or function at Fort Leonard Wood. The contractor bid $37 million. So the private contractor was $11 million lower.

Mr. BEDELL. Right.

Senator PRYOR. There were net savings of $11 million. Does that money stay at Fort Leonard Wood?

Mr. BEDELL. I do not know the answer to that.

Senator PRYOR. Who does know?

Mr. BEDELL. I do not know.

TESTIMONY OF DOUGLAS B. HANSEN, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE, PRODUCITON AND LOGISTICS [1]

Mr. HANSEN. Perhaps I could answer the question, Mr. Chairman.

Senator PRYOR. Yes, sir.

Mr. HANSEN. The budget for Fort Leonard Wood, at the very first opportunity, once the savings have been identified, the budget at Fort Leonard Wood would be adjusted to reflect the new reality. Now the major command usually is the one who would adjust the budget. We are, and the Army has had a policy in the past of allowing a portion of the savings identified by Fort Leonard Wood, to be retained at Fort Leonard Wood as an incentive for doing the study.

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[1] See p. 143 for Mr. Hansen's prepared statement.

Senator PRYOR. Now let's talk about that incentive. What type of incentive? Where does that incentive go?

Mr. HANSEN. Well——

Senator PRYOR. How is that applied?

Mr. HANSEN. Right. The Commander at Fort Leonard Wood may have as a high priority project for him, which might be a quality of life issue or something like that, but is not——

Senator PRYOR. A new gymnasium?

Mr. HANSEN. No, we do not have that much savings.

Senator PRYOR. Golf course?

Mr. HANSEN. No sir, we do not have that much kind of savings.

Senator PRYOR. We have $11 million now to the good at Fort Leonard Wood. I am trying to go on a paper chase.

Mr. HANSEN. Yes.

Senator PRYOR. I would like to know what happens, okay?

Mr. HANSEN. Perhaps I should look at the overall picture first. The cost of keeping the level of detail to track every single dollar would be prohibitive. We do it on a macro level. We do it by accounts. The accounts appropriated by Congress and authorized by Congress like O and M, research and development, procurement. We do macro level and then we break that down by Army, Navy, Air Force, Marine Corps, and then by Major Command within that. So the, let me just take you through the process, sir, if I could.

Senator PRYOR. Yes, sir. By the way, if you want to go ahead now and summarize your opening statement, do so.

Mr. HANSEN. I would not want to take the field of play from——

Senator PRYOR. We will just go back and forth. If you want to summarize your opening statement, maybe you will answer some of these questions in that opening statement. If you would rather have it all printed in the record, I would prefer that, but you go ahead and say whatever you want.

Mr. HANSEN. Well I would be happy——

Senator PRYOR. I do not want to cut you off.

Mr. HANSEN. I would be happy to have my statement entered into the record. I do not believe it contains the level of detail we have gotten to in this question.

The budget figures would be adjusted at Fort Leonard Wood. Now the budget, in essence, really a two step, almost simultaneous process. We are starting with the Command, going to the Major Command, to the Army, to the Department, if you will, a bottom to top approach. While at the same time that is going on the President and leaders of Congress are agreeing on a top line figure for the Department of Defense. And when it gets to the Army staff and the OSD staff there is where the adjustments are made.

During the Reagan Administration we have been in a build up, a Reagan build up. Consequently, the Defense Department's budget was rising. It is always a little bit more difficult to show where you put savings when you have a rising account. But the bottom line is, that absent those savings the Department's budget request would have been higher. Nevertheless, when we submit our budget to Congress and it is authorized and approved at whatever levels it is. Then, we go back and execute that budget at those levels. Now if during that time that the budget figure has come in for a fiscal year, let's say the current fiscal, fiscal year 1988, a study is com-

pleted which would, during fiscal year 1988, result in some small savings.

Now remember the $11 million for Fort Leonard Wood was over 5 years. We are only dealing in the portion of the first year of that. Then, before we had the Executive Order issued by the President in November, there would have been a small amount of savings available to the Army, perhaps some of it available to Fort Leonard Wood, to do something. Perhaps repaid a roof that needed repair that they did not have the money for. But now we take the savings out of the Army's budget before they complete the study. We take enough savings out that we are probably in a deficit situation. And consequently, we do not have anything to give back. We have already taken it out of the budget ahead of time. And that is only a recent occurrence, sir. That is fiscal year 1988 occurrence. Before that time during the very first year of execution, perhaps a partial year, there might have been a small amount of savings available to Fort Leonard Wood or the Army to do some high priority project within the authorized account. The type of work being done was authorized.

Senator PRYOR. But Mr. Bedell testified in his printed statement that this money was used as an incentive to do better and an incentive to build efficiency. It sounds to me, frankly, like a kick back.

Mr. HANSEN. In my statement I also refer to incentives. And that is, again, the reality since November of last year, based on the Executive Order.

Senator PRYOR. After 7 years, we have finally started looking into these alleged billions of dollars we have been calling savings?

Mr. HANSEN. Our budget has always been——

Senator PRYOR. Pardon?

Mr. HANSEN. The Department's budget has always reflected the savings we achieved with this program. We just do not have the level of detail to show where every dollar went. That is, it would just be cost prohibitive to collect that kind of information. It might if there was enough savings, we might have brought another vehicle. But that vehicle was authorized and appropriated for by Congress. If our request was for $300 billion and we showed in that $300 billion request a savings of $10 million, say. Then our request would have been for $300 billion, plus another 10, if we did not have that savings.

Senator PRYOR. So you ask for $10 million less?

Mr. HANSEN. And we saved that $10 million. We have managed to find, we have saved something.

Senator PRYOR. Now when has Department of Defense asked for less? I do not know that you have ever done that.

Mr. HANSEN. So, our——

Senator PRYOR. I never see these figures reflected anywhere.

Mr. HANSEN. Sir, our goal——

Senator PRYOR. Is there an account number for this at OMB, Mr. Bedell?

Mr. HANSEN. I am not a budget expert, but our understanding is that there is an exhibit, perhaps as a budget backup, that shows where the savings were achieved. The problem is we do not have a

corresponding exhibit to show where it went. Because where it went is part of the total budget request.

Senator PRYOR. My wife's birthday is coming up pretty soon. If I gave my wife $50 and said, "I do not know what kind of dress you want; you go out and buy yourself a dress with this $50." I do not think that would buy much of a dress these days, but anyway, let's say she goes out and finds exactly what she wants for $30. She has $20 left in her pocket. Now, I would not ask her what she is going to do with that $20, but I think that Congress ought to ask you what you are doing with your savings. I think OMB has been very negligent in not monitoring these alleged savings.

We all talk about contracting out. You claim you save so much money, but I do not see it reflected in a lessened budget request as a result of those savings. Am I wrong, Mr. Bedell?

Mr. BEDELL. Yes, I think so. But I think it is clear it will be easier to track those savings this year as a result of the recent Executive Order than it has been in the past. Quite frankly, in the past we have relied on the agencies to assure that the savings, from the competition set forth by A–76 would be used for authorized purposes under law. Just like we assume, and you assume, that all other funds, all trillion dollars of it, are being spent for purposes authorized by law. We assume that for a trillion dollars, we can certainly assume that for the $600 million that has been saved on an annual basis by this program.

Senator PRYOR. All right.

Mr. BEDELL. Now if were to have people running all over this country trying to track that $600 million it would be, as Mr. Hansen indicated, not productive. I do not think that is what you are suggesting. But my point was that the new Executive Order instructs us to take out of the budget request that is made to us by the agency, the amount of money that the agency would save, as history would tell us, if they performed the study goals which they committed to do.

For fiscal year 1988, if I can go into this process, the agencies had already set the study goals as I have described earlier. And so everybody knew what those goals were. It amounted to about 46,000 positions. I will be glad to make all of those numbers available, and which agencies those study goals apply to. But there are about 46,000 positions that the agencies had agreed in the prior fiscal year that they would study in fiscal year 1988. The President said that we should take a portion of the savings there that history tells us they will achieve, by studying those positions. We take a portion of the estimated savings out of their budget request, and that amount is shown in the budget submitted to Congress. Those funds would have been taken out of the budget request of the Department of Defense, in Mr. Hansen's case. The totality of that, and again I will make that available agency by agency, will show what we expect the agencies to do in their studies this year: how many FETEs history tells us will be contracted out; how many positions and how much dollars. It amounts to approximately $238 million that if we had not taken out of the budget would have been included in the budget for the agencies' fiscal year 1989 request.

Senator PYROR. All right, let's go to the other side of the ledger. We have been talking about the amount of savings. As I stated ear-

lier, this is the second day of hearings on this particular issue. We held our first hearing on December 17, right before Christmas. I do not know if you or Mr. Hansen were present. We looked at the situation at Fallon Naval Air Station, Nevada, which has reported a $5 million overrun. At Chanute Air Force Base, Illinois, we discovered a $600,000 overrun. At the NOAA Library, we found an overrun of roughly $200,000. At Dugway Proving Ground in Utah, you said there was going to be a $160,000 savings. There is now a $823,000 overrun.

Now, are you balancing the savings against the overruns when you come to Congress and request money?

Mr. BEDELL. Well, as you know, we always budget in advance. We do not have the actuals there. We are not coming to Congress and saying we need money to pay these bills. We are saying we need money to do these things in the future. So——

Senator PRYOR. Who monitors overruns in OMB?

Mr. BEDELL. The individual who monitors the 20 million contract actions every year? Who monitors any overruns in any one of those 20 million contract actions?

Senator PRYOR. Yes.

Mr. BEDELL. We do that on a macro basis only. We do not track each of those individual contract actions. Another point to be made here is that one of the difficulties, you referred to is incentives. I want to explain how we review the incentives here because it really is the problem we have with S. 909. Right now, the agencies get to use the savings, again for authorized purposes. But they get to use savings at least for that fiscal year for which they are appropriated. With a program with as many natural problems as this one does, that is one of the very few incentives, incentives in the sense that an economist uses incentives. An incentive to actually do the studies to make those savings.

If you remove that incentive for future years, they have even fewer reasons to want to pursue them as meeting those——

Senator PRYOR. Now, Mr. Bedell, this is what this hearing is about. You are saying this is one way we can give an agency incentive. An incentive to be more efficient. Mr. Hansen, our friend from Department of Defense, comes forward and states that they ask for less money as result of these savings. You say we need to give them an incentive. Mr. Hansen says they ask for less money. Now, we have a contradiction here.

Mr. BEDELL. From what we have laid out so far, yes. Let me try to explain that. We do not take back all of what history tells us the Department of Defense or any other department or agency would save. We do not take it all back in the process that I described. The $238 million is not all that history tells us would be saved by doing all of the study goals in fiscal year 1989. We leave a part of it, if you will, back with the agency. We left about 25 percent and we also had a factor in here in case they did not make all of the savings that history suggested would be provided. We provided some flexibility. But we left 25 percent of those saving with the agency.

That is the incentive that I am talking about. Now, what Mr. Hansen would say is that DoD would have requested approximately 75 percent more of that savings in their budget if they did not have a contracting out program. We took 75 percent of that and

left 25 percent with the department or agency as an incentive. I hope I have not grabled things too badly.

Senator PRYOR. Well.

Mr. BEDELL. Looks like I have.

Senator PRYOR. Let me shift gears, if I may, for just a moment. I really wish many times that I were a CPA. I am serious because I have a difficult time figuring out this system. I want to ask about appeals rights.

Mr. BEDELL. Yes, sir.

Senator PRYOR. What avenues of appeal exist under present law?

Mr. BEDELL. My understanding, and I will ask for help here from some of my colleagues, my understanding is that whenever the Government awards a contract, whether it is an A–76 contract or any other kind of contract, people who think they have been unfairly treated in the award process for that contract, may appeal to a variety of different forums. Sometimes, depending upon the situation, sometimes depending upon the type of contract. If, for example, it is a contract for automatic data procesing equipment or services, a bid protest may be filed with the General Services Board of Contract Appeals. The General Services Board then can take evidence and hear things, and determine whether the laws pertaining to the award of the contract have been appropriately followed.

If it is not ADP then the contractor generally goes to the General Accounting Office and says the award was made inappropriately here. I was the low bidder or whatever the particular problem may be, and the GAO's dispute bid protest resolving mechanism comes into play. It is largely a consultative process where they try to get the parties together. Try to talk through the problem and come to a common sense solution of it. I think it works well that way, but it also has to, I think, work that way because of the constitutional problems of the GAO vis-a-vis the Executive Branch operations. So those are the two avenues of relief that contractors generally have to complain about a contract award.

They can also resort to the court system as well, by passing all of those things in particular situations. Those are the formal means. There are a variety, and I am sure you are aware of some of them, of the informal means by which people who think they have been wronged by a governmental process can seek to have that redressed. That involves going to us. It involves going to you. It involves going to the Department of Defense and all the other folks in Washington.

That is a summary of my understanding of the contractor's side of the situation. The employees on the other hand have the Civil Service rules and regulations that govern their relationships with their employer and with the departments and agencies. They may file protest and appeals pursuant to that. They, of course, in many instances, have collective bargaining agreements pursuant to which there are formal grievance procedures where grievances can be filed and arbitrated. Then they can resort to the court system.

In addition to that, OMB Circular A–76 has provided for appeal provisions and procedures in it. Those, of course, have been elaborated on by the departments and agencies. The agencies—and employees as well—can seek redress with the department and agency concerned or with Members of Congress, etc. I would like to correct

what apparently is a misimpression in my prepared remarks. My position is not that we do not need any employee appeal rights, they may go to Members of Congress and that is what they are for. That is not, I hope, what I said in my prepared remarks. What I said is there are a number of informal means of appeal that have proven to be very effective in our experience. One of those in the case of wrong is to involve Members of Congress in that particular plight. We always try to be as responsive as we can be to you all. We cannot always provide the answer that the employees want. But we at least try to be responsive. That is what I was trying to say. That is my understanding of the appeal procedures for the Government employees and the bid protest procedures for the contractor.

Senator PRYOR. Mr. Bedell, thank you for that summary. My information shows, according to the General Accounting Office, that if a contractor loses on a bid and the Federal employees win, then that contractor goes to the GAO to appeal, which takes an average of 31 days. For Federal employees under arbitration procedure, that process could take as much as 4 years. Again, we come back to the uneven playing field. Don't you believe the Federal employee and the contractor should have the same appeals process?

Mr. BEDELL. I do not think they should have the same, necessarily the same, appeal process. I think the rights of a contractor to complain about an award of a contract should be different than the right of an employee to complain about decisions made by the people charged by law with running the affairs of a department or agency. I do not think they should necessarily be the same. But I agree with you that 7 years is a preposterous length of time for the employees to have an answer to their appeal or to have to go through the process of appeal. That is far, far too long. I was not aware that, that is the average or whatever.

Senator PRYOR. I think I am correct in that statement.

Mr. BEDELL. Seven year average on the appeal time?

Senator PRYOR. At Fort Sill, it took 7 years for the entire contracting out process. In a Blytheville Air Force Base contracting out appeal, it took 4 years for the case to be settled. It looks to me as though there are two very different set of appeals routes available. It appears that the contractor has an advantage in the appeals process if he loses in his bid. Mr. Hansen?

Mr. HANSEN. Mr. Chairman, if I could, perhaps add a little light. I believe the figures, I am not aware of exactly what you have. But I believe the figures you have for 7 years and 4 years are the complete study. Not any, the appeal is just the last part of it if there is an appeal. Not every study is appealed. And perhaps I could say one other thing, and I hope to speak in general terms. There are always instances where that is not the case.

A GAO bid protest by a contractor usually concerns the application of the Federal Acquisition Regulations. An appeal to an A–76 decision process is an appeal that could come from either the employees or the contractor and would deal in whether we followed the A–76 rule properly. The two are not the same. The Federal Acquisition rules regards how we contract for things. A–76 is more of a management system that deals in whether we should perform activities in-house or by contract. The employees and the contractor

have the same appeal rights to the Department of Defense or to any other agency who is implementing this program with regard to how we apply the A–76 program. Contractors have the additional one with regard to whether the Federal Acquisition Regulations were followed properly.

Senator PRYOR. Mr. Hansen, thank you. We are very proud that Senator Stevens has joined us and I, at this point would yield to him.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Mr. Chairman, I have been peregrinating between three other committees so far. I am sorry to be late to join you and I am delighted you are taking up this subject. Gentlemen, I have some problems, as Senator Pryor does, with the procedures that apply to the A–76 decisions. Let me just get specific. I do not have all the details; if I am wrong I will correct them for the record.

We recently had a contracting out of one of the Coast Guard functions at Kodiak, Alaska. It involved base operating and support services. Kodiak is an island off the mainland of Alaska, a major Coast Guard base. This was one of the functions. The people there were civilian employees, permanent citizens, who had their homes in the area. Now, this contracting out took place and we had difficulty finding out any of the details that might apply to these employees. For instance, were they to get any kind of consideration by the new contractor as far as employment preference? Was there anything that could be done to give them priority in other areas of the Federal Government in their vicinity? There are not too many Federal jobs in Kodiak, I will tell you, and moving from Kodiak to Anchorage is like moving from here to say, Richmond, or a little bit further.

And third, they had little, if any, counselling available from Federal personnel professionals as to what their options were. Some of them were entitled, as I understand it, to early retirement. Others were entitled to be moved laterally into other areas. But I've got to tell you, I think it cost us more money to counsel those people that were affected than the Government saved by the A–76 contracting out procedure. Where do we come out in terms of that cost? Why is not that added into the overall disadvantage of contracting out?

Mr. BEDELL. I don't know exactly whether we have tried to account in any way for the cost of the Government of running those contracting out efforts and then trying to allocate them in some way to the total cost of running the program. Let me observe, however, that it has been our experience, but certainly we cannot speak for every single situation.

The contractor who is competing for the opportunity to perform the Government service usually has a very strong incentive to communicate with the employees of the Federal installation because they are often the employees that he seeks to have work on that contract. I know that was the case at Fort Sill. History tells us that an awful lot of those employees go to work for the contractor and the contractor wants them as well, because they are experienced and they know the place, and they are, in Kodiak, maybe the only

people there who could perform it. The process does not work, I am sure, flawlessly, perhaps there are things that we can look at in the A–76 process to either have the contractor perform more of those services, or list it as a required duty on their part. But usually the contractors have a very strong incentive to communicate to provide that counselling and so forth.

Senator STEVENS. Well, it seems that Congress in its wisdom, and I think it has been wisdom, has provided a series of benefits for Federal employees, the basic ones being retirement, major contribution to health insurance cost, and leave time. I am told of two occasions when several of the employees did end up being hired by the new contractor and the difference was they did not have any retirement. They had no health insurance. And they had no expressed leave time. So that the savings that were reported were really savings by avoiding the kind of cost that we have mandated for Federal employees. If that is the case, why do not we contract the whole Government out?

As a practical matter, if the savings really are being paid, in effect, by loss of benefits that we feel are essential for the Federal employees, why do not we go the other direction and just contract it out. We've got a fellow over there at OMB who would like to contract out the Postal Service, I notice. Now, it really is true. The employees are the ones who are paying the cost of contracting out today. I think there are some instances, by the way, where contractors could, by virtue of their experience and their work force, perform functions for the Government that are not unique Government functions. They are service functions for Government. They could be performed by that other work force cheaper or more efficiently with all of the benefits to the employees that they have out there. There would be an even scale if employees who are working for a private contractor, did have health insurance, did have retirement, did have a leave program similar to the Government's employees. I do not see that in the A–76 process any equivalency in terms of the benefits that a contractor is required to provide vis-a-vis what Federal employees are entitled to, Mr. Hansen.

Mr. HANSEN. Mr. Stevens, perhaps I could explain a little of the process. The base operating support-type contracts that you are speaking of at Kodiak or anywhere else are covered by the Service Contract Act. The Service Contract Act specifies a minimum fringe benefit factor. Minimum being that they cannot be below that. The contractors must pay that as fringe benefits to their employees.

Senator STEVENS. What is the difference between that minimum and what we pay at a minimum for Government employees?

Mr. HANSEN. I could not give you the exact amount, but I——

Senator STEVENS. How would you like to give us that for the record, Mr. Hansen?

Mr. HANSEN. I would try. The Government fringe benefits are not like a dollar salary. I think the Service Contract Act is $1.84 right now.

Senator STEVENS. I do not think we should be opposed to A–76. I can think of one function I remember real well. That was the laundry function on base. As a matter of fact, the laundry functions in town were performed by organized employees. They were union employees, but they had a plant. They had a procedure. They had

the capability with volume to provide the service to the base much cheaper than operating it on base. Now, I think that we have got some situations like that. We ought to pursue them every way we can. But, we ought not pursue this just on the basis of saying, okay, let's shove this function of the Government out there. We are going to save so much money because you do not have to pay retirement costs. We do not have to pay health costs. We do not have to pay leave costs. We do not have to pay these other costs that are associated with the standards that the Congress has imposed on the Executive Branch for Federal employees.

Mr. BEDELL. Let us, if we may, make that kind of comparison to see what the contractor is required to provide in fringe benefits compared to what the Government is and supply that for the record. Again——

Senator STEVENS. Let me go back to my original question.

Mr. BEDELL. Yes.

Senator STEVENS. I do not think I really asked a question there. In Kodiak they had no counselling as to their existing rights, which as I understand it include a right of first refusal to perform the function they are performing for the Government. Now, where does that come from? Does it come from the contractor or is that a burden of the agency that has just lost the function?

Mr. BEDELL. To advise them of what their rights are?

Senator STEVENS. To advise the employee of his or her rights in terms of right of first refusal.

Mr. BEDELL. Well the aency has the responsibility to counsel its employees on the A–76 process and their individual rights, whether it be early retirement, in the case of contracting out a function, whatever it may be. They have the responsibility for doing it.

Senator STEVENS. Well, this is one of the great difficulties I have. Most of the contracting out is taking place in the military.

Mr. BEDELL. Yes, about 70 percent.

Senator STEVENS. On civilian functions.

Mr. BEDELL. Yes, sir.

Senator STEVENS. Not the uniform functions.

Mr. BEDELL. Correct.

Senator STEVENS. And the great problem is that by eliminating the unit, you are usually eliminating the people who are going to give the advice, when the entire unit was contracted out. Now, who is supposed to give the advice to the employees as to their rights when it has just been abolished?

Mr. BEDELL. In your example of the laundry.

Senator STEVENS. This was a service. That was laundry, it was another base. The service rights, operation support.

Mr. BEDELL. But let's take that——

Senator STEVENS. Operation support is what it was.

Mr. BEDELL. We would not expect—in the situation of the laundry—for the folks doing laundry——

Senator STEVENS. Yes.

Mr. BEDELL. To provide one another with guidance. It would be the personnel specialist and, ultimately, the head of the agency who is responsible for seeing that, that advice is rendered. And what we find is that it is usually rendered by the personnel folks within the agency.

Senator STEVENS. Well, why don't we set up an A–76 liaison team to go out and tell these people so we have professionals dealing with this problem wherever these transitions take place? Why cannot OPM or someone have a team that goes out and gives them the advice and not just a guesstimate from someone that has never been through the procedure before? That is what happened at Kodiak. No one had ever been through it before. And it ended up that those employees who could have kept their jobs did not know how to do it. Would you consider that?

Mr. BEDELL. Yes, sir.

Senator STEVENS. Is that in your function?

Mr. BEDELL. It is in our function to set the policies and the guidance here, but that is certainly something we could try to address. Let us take a look at it.

Senator STEVENS. We have similar teams in the military. When you close a base there is a group that goes out and gives advice to everybody.

Mr. BEDELL. Right.

Senator STEVENS. If you are going to open a base they have a group that goes out and helps the civilians, for the civilian impact and everything else.

Mr. BEDELL. Yes.

Senator STEVENS. But they are professioals. They have been through it before. I think there ought to be some guidance for these people who are going through a procedure they have never been through before.

Mr. BEDELL. I think that is a good idea.

Senator STEVENS. I am sorry I am being called away again.

Senator PRYOR. Thank you, Ted. Thank you very much. We are going to leave the record open for a few days if you want to submit any more questions.

Thank you. I am going to ask two or three more questions and then we will go to our last witness. The A–76 cost study, let us go back to that, states that if the contract is awarded in-house, in other words to the Federal employees, then it will be restudied again in 5 years, is this correct?

Mr. BEDELL. Yes, I am so advised.

Senator PRYOR. If a contractor is awarded the contract, do we restudy it in 5 years?

Mr. BEDELL. Yes.

Senator PRYOR. Is that true for DOD?

Mr. HANSEN. We actually review contract performance on an annual basis because no contract is more than one year long. We have options for the out years and at each time before you exercise an option you take a look at the performance and the cost history of that contractor before you pick up that option, if you will. My understanding of the current rules on whether we would allow an in-house work force to rebid against that contract 5 years later, there would have to be a problem with the contract mode, that is, either a performance problem or a cost problem before we would to that.

Senator PRYOR. We talked just a moment ago about the Department of Defense. Let me see if these figures are correct. According to a Department of Defense report, the amount of contract work at

the Department of Defense has grown in the past 8 years by 151 percent. Is that genrally correct?

Mr. HANSEN. I could not verify the 151 percent, Mr. Chairman. But it was my office that prepared the report and we just dealt in dollars. It did go up quite a lot.

Senator PRYOR. The number of civilian employees in the same time, in the Department of Defense, has grown 13.6 percent. That is your report?

Mr. HANSEN. Same report, yes sir.

Senator PRYOR. This suggests that contracting out is not being used to replace Federal employees, but to augment or add to them. Now how do you reconcile this continuing growth in both the numbers of Federal and contract employees that are nonmilitary?

Mr. HANSEN. Let me try and explain that. For the first——

Senator PRYOR. Here we were, we voted for all these massive build ups in defense. We want to sleep well at night. We want to protect the security of the country. And yet, from what it looks like here, we are seeing a massive civilian buildup in the Department of Defense, but not necessarily a military buildup. Go ahead, I interrupted you, I am sorry.

Mr. HANSEN. The account that I believe those figures are, or the one that has the largest growth is the Operation and Maintenance account. What that shows is, in fact, the buildup you talked about. The Operation and Maintenance account has traditionally taken the heavy part of any cuts and we stopped painting buildings. Stopped repairing roofs in order to be able to continue to sustain our readiness and our sustainability of the Defense Department. And I must admit, Mr. Chairman, I am out of my league here, but I am trying to speak in general terms. If you would like more specifics I will provide them for the record.

Senator PRYOR. We would ask that for the record.

[The information referred to follows:]

The increase in the number of contract employees is a result of the Department's efforts to obtain base support services at the most reasonable cost through OMB A-76 cost competitions. In approximately 50 percent of the studies performed it was determined that the service could be provided at a lower cost by private contractors. Thus, the increase in contract employees.

The civilian personnel figures shown in the report you referred to include *all* DOD civilian employees, those involved in commercial activities and those employees involved in the performance of all other functions. Personnel increases in other than commercial activities functions may occur with no relationship, direct or indirect, to changes in the number of contract employees.

Mr. HANSEN. The A-76 program in the Department of Defense can account for approximately $1 billion in service contracts. We have always contracted for services in the Department of Defense. At the beginning of the Reagan administration, I believe we were $13, $14 billion, and again you have the figures in front of you, I do not. That has grown to $25 or $30 billion. Only $1 billion of that got their——

Senator PRYOR. Only one?

Mr. HANSEN. $1 billion of contracts since 1979 have been contracted for as a result of the Department's A-76 program. The rest were either already in existence or were new contracts, to give as an example, to repair roofs that needed repairing that we did not have the money before because we did not. O and M account was

quite bare. Now, at the same time early on in, up until the last couple of years, the Department civilian instrength was limited. There were instrength controls on the Department.

I believe, it is my understanding in the last two years, the Department has not operated under instrength controls. So we had more money coming into the Department to do operation and maintenance-type things and our civilian work force was being constrained. Therefore, there was only one other choice to do it. But there was not the A–76 program that did it. It was just more money being available to do things that needed to be done. I hope I have made that somewhat clear?

Senator PRYOR. I am going to just make one observation and then call our final witness. I have sat here this morning trying to digest some of this. A lot of it I just do not understand. It looks like we are sending a message out to the Federal work force and to the Federal agencies. That message says, we are going to continuously study your jobs for possible contracting out. In Missouri and Oklahoma, these two bases, the Government is saying that we prefer the private contractor, and we want to get rid of as many Federal employees as possible.

Is that what our Government is saying today?

Mr. BEDELL. No, sir. But I am sure that is the perspective of those people who are in fear of losing their Government jobs as a result of this program. The program is saying, trying to say, something else. And that is that taxpayers have a right to the performance of commercial functions in the cheapest way possible. We want it done so that it is accomplished in a timely fashion and 7 years is not timely and it is wrong. It should not take that long. That is unfair to the employer, the employees and the taxpayer. But the A–76 program is intended to say, do it fairly, study it, and give the taxpayer the best service for the least amount of money.

Senator PRYOR. Thank you Mr. Bedell. Mr. Hansen do you have any comments? We appreciate both of you appearing here this morning.

Mr. HANSEN. Well, I appreciate the opportunity to address your Subcommittee, Mr. Chairman.

Senator PRYOR. We will hold the record open for a few days because I think Senator Stevens, and perhaps myself, may want to forward some questions to you. You have been very good witnesses. Thank you both.

Mr. HANSEN. Thank you, sir.

Senator PRYOR. We will call our last witness, Mr. Gary Engebretson. You are the Executive Director of the Contract Services Association?

Mr. ENGEBRETSON. Yes, sir.

Senator PRYOR. We look forward to your statement.

TESTIMONY OF GARY D. ENGEBRETSON, EXECUTIVE DIRECTOR OF CONTRACT SERVICES ASSOCIATION OF AMERICA [1]

Mr. ENGEBRETSON. Thank you, Mr. Chairman. I would ask that the comments that I make today be entered into the record, your permission?

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[1] See p. 149 for Mr. Engebretson's prepared statement.

Senator PRYOR. That will be done.

Mr. ENGEBRETSON. I enjoyed your comparison of the budget process by your wife's purchasing a dress. That you were going to give her $50 to purchase a dress for herself. In my case, thinking of our situation, if my wife was going to take the $50 to purchase a dress and went out and bought the dress and, say, she did buy it for $30, she would come back and say to me, I did save $20 and I would like you to see the $30 dress. I think what will come out of this statement that I will give you today, is that it is important for communications to be established between, not alone the Government agencies but also with Congress, feeling that the contractors sometimes become the middle person in this whole process and sometimes run into problems because of the lack of communications.

I want to thank you for the opportunity and we want to applaud the Subcommittee for showing interest in issues that impact the services industry. I am Gary Engebretson, Executive Director of the Contract Services Association of America. CSA is a trade association exclusively representing those companies that provide technical and support services to Federal, State, local, and foreign governments. CSA serves as a forum and advocate for the entire range of issues of interest for the contract services industry.

In fiscal year 1987 the services industry accounted for $88.9 billion or 49 percent of the Federal Procurement budget. I only state this to emphasize the Federal Government's reliance on the private sector for services. The data came from the Federal Procurement Data System. Due to this large figure, it is essential that all parties involved work together to ensure that any pending legislation that influences Federal procurement of services is cost effective for the Government and fair for all participants. Therefore, I take great pride in this opportunity to address the concerns of the service contractors.

CSA is in support of the concept of using OMB Circular A–76 savings to reduce the budget. S. 909, the Commercial Activities Contracting Act of 1987, can take advantage of the improved efficiency, if, the planned cost savings were taken out in advance. Projecting the savings of A–76 utilization will give agencies a goal to meet. Without rigid budget goals agencies would lose their incentive to utilize the program and cost studies would be delayed and/or canceled. However, if agencies were allowed to save a percentage of the savings they generated, Government managers and policy makers would be encouraged to develop the most efficient organization. Agencies should be rewarded for utilizing programs that save the taxpayers money.

If Senator Reid and this Subcommittee did not already appreciate the benefits of the A–76 program, we would not be here today seeking ways to improve the process. It is not necessary for me to describe the commercial activities program in detail, because the process has proven to work and work well. I am sure that we are all aware of the program benefits as stated by the General Accounting Office, the Congressional Budget Office and countless other studies. I have included two enclosures for the record that give a brief history of the A–76 program and a synopsis of the recent studies citing cost savings.

I like to think everyone can review the facts objectively and work together to truly improve the problems. Unfortunately, while reviewing the testimony from the previous hearing, I failed to find any useful union information that can be used to improve the process. Instead, I found unsubstantiated comments of isolated cases that are not a true reflection of the Federal procurement market place. I assure you that contractors can describe equally as frustrating stories that include last minute calculations, after costly proposals have already been submitted. Indefinite delays, countless unsigned and undated amendments, intentionally damaged equipment, lost or damaged user manuals or blueprints. Occasional political intervention by the State's Congressional Delegations. Outdated performance work statements and the list goes on and on. I do not feel that this mudslinging will aide you in improving the process.

I cannot come before you in good faith and say that the industry does not have it's bad apples, because it is true. We at CSA are establishing what we call a self-governance and professonal standards program tailored for the Government service contractors. We hope that this will be at least one way to respond to the lingering doubts. I assure you that CSA is as concerned as you are with ensuring that contractors act in the legal and ethical manner. A single company acting in an unethical manner can destroy the credibility of the entire services industry.

We are not facing a policy problem, but rather a problem of implementation, as we see it. Until recently very little guidance existed concerning the potential budget impact of greater reliance on the private sector. As Senator Reid stated, "* * * we are moving in the right direction." OMB's plan to reduce agency budget requests to reflect anticipated savings from A-76 is an effective way to reduce the Federal spending. For S. 909 to work best cost savings must be removed in advance.

No realistic or efficient budget manager can reasonably expect unspent money to be returned at the close of a Federal Government's fiscal cycle or year. Instead Congress must study an agency's budget request, evaluate their operational cost and then provide a sound, efficient budget that uses every resource to lower cost without reducing services. This approach will help the agencies and the Congress achieve a realistic budget goal.

When the Department of Defense budget for fiscal year 1989 was first forecast 5 years ago it was set at $456.4 billion. When the fiscal year, beginning October 1, starts, the budget will be just about $299.5 billion. Last fall's budget summit concluded with a 2-year $76 billion deficit cutting agreement for the Federal Government. During this time of fiscal constraint, productivity improvement and efficiency seeking programs have become a standard good management tools.

Common sense would dictate that if slightly amended, S. 909 can be a useful vehicle to implement OMB Circular A-76 and to reduce Federal spending. This legislation, along with the President's 1989 budget and the November 1987 Executive Order on commercial activities programs, are signs that progress is being made in the fight to reduce Government waste and inefficiency, although long overdue.

We at CSA believe that S. 909 is beneficial because it addresses the cost savings of A–76 programs regardless of whether the contract is retained in-house or contracted out. If Congressional concerns to reduce Federal spending are valid, which we think they are, let's utilize every source available, which means greater reliance on the private sector.

The entire process is a win-win situation for the Federal Government and the United States taxpayer. When a commercial activity is contracted out CBO estimates estimate that for fiscal year 1986 a savings of 35 percent was reflected. If a cost comparison is completed but the work remains in-house a savings of 20 percent will still be achieved because of the increased efficiency that results from the study. Taxpayer savings should be enough incentive to reduce obstacles and, of course, correctly implement an A–76 program.

For the program to be fair, it is essential that the Government agencies and the civilian contractors work together to ensure that the Federal employees receive the priority they deserve. CSA agrees that they should be active participants in defining the work statements. S. 909 would achieve this by requiring agency management to consult with the employees every 30 days during the study.

Senator PRYOR. I apologize, but I am anticipating a vote on the Senate floor in the next few minutes.

Mr. ENGEBRETSON. Yes, sir.

Senator PRYOR. When that occurs, I am going to have to go to the floor. Would it be permissible for us to put the balance of your statement in the record?

Mr. ENGEBRETSON. Yes, Mr. Chairman.

Senator PRYOR. I will ask you a couple of questions and then we will close this hearing down.

Mr. ENGEBRETSON. Thank you.

Senator PRYOR. I thank you very much for your understanding. You do support the concept of sending this saved money back to the Treasury, is that correct?

Mr. ENGEBRETSON. A percentage, yes.

Senator PRYOR. You also support, I think, some incentive to be reserved for the agency?

Mr. ENGEBRETSON. Yes.

Senator PRYOR. Now why do you think an agency needs incentive to be efficient?

Mr. ENGEBRETSON. From what we have viewed, through conversations and letters that we receive at our Association, it appears as though there would be a tendency to cancel a lot of A–76 projects if the Government manager felt that every dollar was going back into the Treasury. If there was some kind of a program where part of the savings would stay within that department, or at that Fort or wherever the location was that this process was going to take place, then they would be encouraged to go forward and, with the program.

Senator PRYOR. Does not the fact that there is going to be a bonus, I hate to use the word kick back, let's call it a bonus, for the agency if they can hire a private contractor to tilt the balance in favor of the private sector versus the Federal employee?

Mr. ENGEBRETSON. Well, as you are probably aware, Mr. Chairman, not every operation is encouraged or feels as though they

should go forward with an A–76 program. Our concern is that there are many opportunities in many agencies for the Government and the taxpayer to save money, some dollars.

Senator PRYOR. I think you are exactly right. I do not disagree.

Mr. ENGEBRETSON. We think that if there is still some kind of an incentive left in the program, it will encourage the agencies that are dragging their feet and there are some doing that to continue with the A–76 program, to say they will go ahead because there is some kind of reward for them in order to proceed. Now——

Senator PRYOR. I know that you are not as concerned about this as I am.

Mr. ENGEBRETSON. Yes, sir.

Senator PRYOR. I believe that we in Congress have been very negligent, failing to exercise oversight of those savings, how they are being used by the Fort Sills and the Fort Leonard Woods of the world. I think we have been extremely negligent in this.

Mr. ENGEBRETSON. Yes.

Senator PRYOR. We have no idea what this money is being spent for.

Mr. ENGEBRETSON. I agree and I would surely think that to improve the program so we know where the monies go, again going back to the first part of my statement. I think it would be then even easier for Congress to make a judgment call on this kind of program if you knew where the monies were going. And I guess the other thing that concerns me is that we also look for that level playing field for the contractor. Have it as fair as it possibly can be so that whether it stays in-house or goes out to the contractor, naturally because of my position we want it to go to the contractor. But, still a fair playing field is more important. And——

Senator PRYOR. Do you think the contractor has a better appeals option than the Federal employee? If you lose a contract, do you have a better route to take than the Federal employee if they lose?

Mr. ENGEBRETSON. We have a better route to probably take, but the results have not been better. Meaning that we have not necessarily won what we might call in our judgment a fair shake.

Senator PRYOR. In the appeals section of our legislation you are not supportive of that, is that correct?

Mr. ENGEBRETSON. Of your 30——

Senator PRYOR. There is no number, it is only a draft.

Mr. ENGEBRETSON. Yes, a portion of that, that is correct. We think that if the process of using the employee to help go through the performance work statement when they are setting up the MEO or the most efficient organization. We think by submitting written agreements, I mean written comments and written proposals to the people that are guiding this study, they will have their chance to submit their concerns, their interest, their problems in that written document.

Senator PRYOR. Are the private contractors today supportive of the change that we are proposing that the private contractor has to build into that bid the cost of retirement benefits?

Mr. ENGEBRETSON. We have——

Senator PRYOR. Do you support that?

Mr. ENGEBRETSON. We have stated we would support that, yes.

Senator PRYOR. Has this been built into many of the contracts in the past?

Mr. ENGEBRETSON. No, sir.

Senator PRYOR. Has that enabled contractors to compete unfairly with the Federal employee?

Mr. ENGEBRETSON. I do not know if I would say compete unfairly for the simple reason that it is a rule or regulation that the contractors had to follow. And if it is the guidelines of whether it is A–76 Circular or FAR Part 37, or whatever our guidance is. And if that is what it is, that is what our contractors have to go by because those are the rules and regulations that we live under today. And so if, because it is not there, if we call it unfair, then I guess that would be a judgment call.

Senator PRYOR. But it is a real expense?

Mr. ENGEBRETSON. Yes, sir.

Senator PRYOR. And it is a real cost which should be included in the contract.

Mr. ENGEBRETSON. Yes, sir.

Senator PRYOR. And didn't our Government want a true reflection of the cost of a contract?

Mr. ENGEBRETSON. Well——

Senator PRYOR. That is what it apears to me——

Mr. ENGEBRETSON. You are asking me something now that, of course I was not there when they wrote it, but it would reflect that it would not?

Senator PRYOR. It does to me. You have been a good witness.

Mr. ENGEBRETSON. Thank you, Mr. Chairman.

Senator PRYOR. We thank you very much, and your full statement will be placed in the record.

Mr. ENGEBRETSON. Thank you, sir.

Senator PRYOR. Our hearing is adjourned.

[Whereupon, at 11:52 a.m, the Subcommittee adjourned subject to the call of the Chair.]

100TH CONGRESS
1ST SESSION

S. 909

To require that all amounts saved as a result of Federal Government contracting pursuant to Office of Management and Budget Circular A–76 be returned to the Treasury, that manpower savings resulting from such contracting be made permanent, and that employees of an executive agency be consulted before contracting determinations by the head of that executive agency are made pursuant to that circular.

IN THE SENATE OF THE UNITED STATES

APRIL 3 (legislative day, MARCH 30), 1987

Mr. REID (for himself, Mr. SARBANES, and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To require that all amounts saved as a result of Federal Government contracting pursuant to Office of Management and Budget Circular A–76 be returned to the Treasury, that manpower savings resulting from such contracting be made permanent, and that employees of an executive agency be consulted before contracting determinations by the head of that executive agency are made pursuant to that circular.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial Activities Contracting Act of 1987".

SEC. 2. ACCOUNTING FOR SAVINGS RESULTING FROM FEDERAL GOVERNMENT CONTRACTING UNDER OMB CIRCULAR A-76.

(a) SAVINGS TO BE RETURNED TO THE TREASURY.—(1) Not more than 60 days after the beginning of each fiscal year, the head of each executive agency shall pay into the General Fund of the Treasury the amount determined under paragraph (2).

(2) At the beginning of each fiscal year, the head of each executive agency shall determine the total amount saved by that executive agency as a result of converting during the preceding fiscal year to contractor performance any commercial activity which, during the preceding fiscal year—

(A) was previously performed by civilian employees of that executive agency; or

(B) was previously performed for or on behalf of that executive agency by members of the uniformed services.

(b) CIVILIAN EMPLOYEE SAVINGS.—(1) Whenever an executive agency converts to contractor performance any commercial activity, the total number of civilian employees authorized for that executive agency in the fiscal year in which the conversion takes place shall be reduced by the

number of civilian employees of that executive agency required to perform that commercial activity on a full-time basis (including the full-time equivalent of the number of civilian employees of that executive agency required to perform such activity on less than a full-time basis).

(2) The Director of the Office of Management and Budget, after consulting with the head of the executive agency concerned, shall determine the amount of any reduction in the authorized number of civilian employees of that executive agency pursuant to paragraph (1).

(c) UNIFORMED SERVICES END STRENGTHS.—(1) Whenever an executive agency converts to contractor performance any commercial activity previously performed for or on behalf of that executive agency by members of a uniformed service, the end strength authorized for that uniformed service at the end of the fiscal year in which the conversion takes place shall be reduced by the number of members of that uniformed service required to perform that commercial activity on a full-time basis (including the full-time equivalent of the number of members of that uniformed service required to perform such activity on less than a full-time basis).

(2) The Secretary concerned shall determine the amount of any reduction in the authorized end strength of a uniformed service pursuant to paragraph (1).

SEC. 3. PARTICIPATION OF FEDERAL EMPLOYEES IN DETERMINATIONS UNDER OMB A-76.

(a) IN GENERAL.—Each officer or employee of an executive agency responsible for determining under Office of Management and Budget Circular A–76 whether to convert to contractor performance any commercial activity of that executive agency—

(1) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees of the executive agency who will be affected by that determination and consider the views of such employees on the development and preparation of that statement and that study; and

(2) may consult with such employees on other matters relating to that determination.

(b) CONSULTATION PROCEDURES.—(1) In the case of employees of an executive agency represented by a labor organization accorded exclusive recognition under section 7111 of title 5, United States Code, consultation with representatives of that labor organization shall satisfy the consultation requirement in subsection (a).

(2) In the case of employees of an executive agency other than employees referred to in paragraph (1), consulta-

tion with appropriate representatives of those employees shall satisfy the consultation requirement in subsection (a).

(c) REGULATIONS.—The Administrator of the Office of Federal Procurement Policy shall issue regulations to carry out this section. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in subsection (b)(2) for purposes of consultation required by subsection (a).

SEC. 4. DEFINITIONS.

In this Act:

(1) The term "executive agency" has the same meaning as is provided in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(2) The term "Secretary concerned" has the same meaning as is provided in section 101 of title 37, United States Code.

(3) The term "uniformed service" means any of the uniformed services named in section 101 of title 37, United States Code.

COMMERCIAL ACTIVITIES CONTRACTING ACT OF 1987 (CACAL)

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

Provides that the bill shall be referred to as "Commercial Activities Contracting Act of 1987" legislation.

The acronym to identify this bill will be "CACAL"

SECTION 2. ACCOUNTING FOR SAVINGS RESULTING FROM FEDERAL GOVERNMENT CONTRACTING UNDER OMB CIRCULAR A-76.

Requires that all money savings as a result of OMB A-76 actions be returned to the Treasury. Also, any manpower positions saved will result in equivalent federal civilian and uniformed employee end strength reductions.

Some executive agencies do not turn back any money or manning positions saved after an A-76 action. Over the last five years, these contracting-out savings have amounted to over $500 million. Multiplying the yearly manpower savings (since a savings in manning is also a savings in the out years) the actual projected savings would be closer to $1.5 billion. The President's budget has never identified these additional dollars available for his agencies' use. This bill, by now requiring the monies and manning positions be returned, never technically affects the President's budget. Additionally, a loophole the executive branch has been using to avoid meeting Congressionally imposed caps on manning will be eliminated.

SECTION 3. PARTICIPATION OF FEDERAL EMPLOYEES IN DETERMINATIONS UNDER OMB A-76

Employee participation in creating the government bid in any proposed contracting-out action is mandated. Employees are placed in a position to ensure the government's bid is the most cost-efficient and therefore, the most competitive that government can create.

OMB Circular A-76 allows minimal employee participation in the creation of the government's bid. However, as A-76 is currently applied, employees are realistically excluded from the process of creating the most efficient organization to compete

with the contractors' bids. Government management often uses A-76 actions to fill their manning shortfalls rather than to try to create an efficient organization. They have no natural "advocacy", as industry does, to design a bid that will be the lowest and win. However, employees are "natural" advocates of a low and competitive bid. Their motivations are similar to contractors, since both are competing for their jobs. The bill, as written, includes employees in the process as far as possible without interfering with the strict rules of federal procurement.

SECTION 4. DEFINITIONS

"Executive agency", "secretary concerned" and "uniformed service" are defined in common legal terms.

Written Statements by Senator Harry Reid before the Governmental Affairs Subcommittee on Federal Services, Post Office and Civil Service Hearing of S.909 Commercial Activities Contracting Act of 1987 Legislation (CACAL) on December 17, 1987

History's largest stock market crash told government: American taxpayers want real solutions to bloated federal deficits. Now the largest debtor country in the world, America's trade deficit numbers in the billions. The dollar's value world-wide continues to fall sharply. And still, federal agencies keep demanding more money.

These unelected federal agency officials, demanding more and more money, and inefficiently spending it, are a major cause of America's financial problems.

FEDERAL GOVERNMENT BUDGETING & SPENDING PROCESS

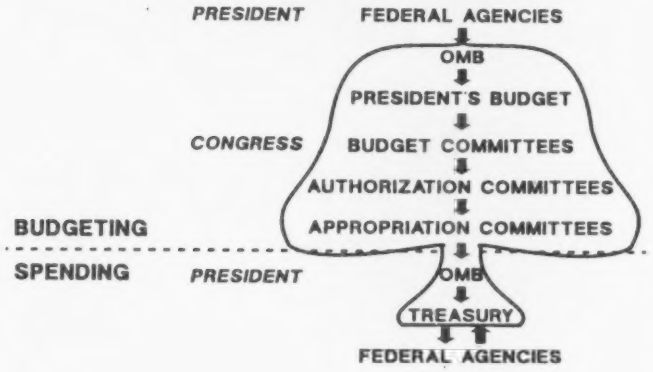


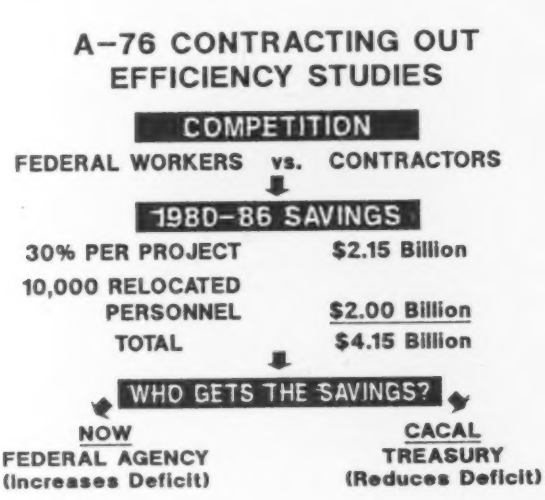
Chart #1 illustrates what I call the federal "money tree"; how government budgets and spends. On the left, we see blue lettering divided by a dotted line. Above the line is Budgeting, below is Spending. On the right of the chart is what I call the "money tree." These government groups, outlined in green, form the shape of a tree.

On top of this "money tree" sit federal agencies, clamoring for money. Working through the Office of Management and Budget, or OMB, the President submits a budget to Congress. Then Congress, working with the President, budgets, authorizes, and appropriates funds. That's the budgeting process-above the dotted line. Next, below the line, comes the spending process. Once Congress appropriates funds, the President, again working through

OMB, allows funds to flow from the Treasury to the federal agencies.

Regardless of how you view Gramm-Rudman or any other budget cuts, these solutions try to solve America's money problems by focusing on the budgeting Process. Today's bill, S.909, the Comercial Activities Competition in Contracting Act of 1987 Legislation, which we good-naturedly called by its acronym CACAL, is different. It focuses on the base of the tree, or the spending process. In particular, it goes to the "root" of the tree, where the problem originates-federal agency spending.

The red arrow at the root of the "money tree", from federal agencies back to the treasury, illustrates what CACAL does. S.909 forces federal agencies to give unneeded "slush funds" back to the treasury. CACAL makes no cuts in agency services. It simply requires unneeded money be returned to the treasury for deficit reduction.



Let's turn our attention to the second chart. It outlines, in blue, three issues of A-76 Management Studies: Competition, Savings, and Who Gets the Savings?

At the top of the chart we find A-76 efficiencies come from competition between federal workers and industry contractors. Whoever bids the lowest gets the work. Controversy now surrounds the fairness of this competition.

Next, the chart shows dollar savings resulting from competition. From 1980 through '86 the savings have averaged 30%

of the original project cost. We are told the cumulative total savings from these projects exceed $2 billion dollars. Additionally, 10,000 personnel have been relocated. Their positions were never reduced. The people were just relocated. It's the old shell game. Don't cut the workforce, simply hide it. We are told cumulative total savings from eliminating these unnecessary hidden positions, from 1980 through '86, are $2 billion dollars. Totalling all savings: over $4 billion dollars. Again, controversy surrounds what savings actually occur.

Finally, the chart asks "Who gets the savings?". Now, federal agencies keep the money, increasing the budget deficit. Isn't that astonishing? America is in the worst financial crisis in our Nation's history, and federal agencies create "slush funds." Gnawing away at the "money tree's" base, these agencies refuse to reduce their budgets.

Good management must benefit the taxpayer, not burden him. I strongly oppose federal agencies keeping unnecessary money. Government efficiency means giving agencies less money, not more. And we must account for all money spent. Where's the $4 billion dollars? Where did the money disappear? CACAL changes what happens to the savings. S.909 proposes returning all savings from A-76 management studies to the treasury for deficit reduction.

I am happy to report, Mr. Chairman, the Senate Appropriations Committee now recognizes the importance of this issue. A few weeks ago, that Committee, based directly on A-76 savings, cut $117 million from the Defense Appropriations Bill.

Additionally, President Reagan recently signed Executive Order 12615 on November 19, 1987. This order has language that finally requires some agencies to include some of their A-76 savings in their annual budget proposals to OMB.

These are encouraging signs. We are moving in the right direction. But we need legislation requiring all federal agencies to give back all unneeded dollars every year.

When I give my 12 year-old son a dollar, and send him to the store to buy a quart of milk, he always returns the change. It's time federal agencies started to do the same--return what they don't need. That's a real solution to reducing America's budget deficit.

STATEMENT

OF

RANDY F. BANOVICH

PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 1841

ON

CONTRACTING OUT

AT

FALLON NAVAL AIR STATION, NEVADA

DECEMBER 17, 1987

Mr. Chairman, my name is Randy F. Banovich. I represent the people of Fallon, Nevada; the federal employees at Fallon Naval Air Station; and the members of the American Federation of Government Employees, Local 1841. I am pleased to be with you today in order to comment on Senate Bill 909 and to discuss the contracting situation at Fallon Naval Air Station.

Let me first say that I strongly support Senate Bill 909, which deals with contracting out of federal work. This excellent legislation focuses on three major elements of contracting out: (1) the reduction of the annual federal budget deficit by returning any contracting out savings to the U.S. Treasury; (2) providing accountability to the government's contracting out program; and (3) insuring employee involvement in the contracting out process. The major reforms are important to every American taxpayer, requiring our unified and vigorous support. It is ironic that I should be here today to provide details on a contracting out case that would probably have never happen if S-909 had been passed in 1985. For it is the very controls that are called for in S-909 -- fiscal reporting and accountability -- that are being disregarded in the current contracting out program. In addition, the union at Fallon had to aggressively press for information and involvement during the entire A-76 study at Fallon. As I think you will see today, the current contracting out program is neither fair, equitable, economical, nor efficient.

The A-76 study at Fallon NAS was announced in October 1982. The process took over five years, as bids were opened in April, 1987, and the contract was implemented in November of this year.

This particular contracting out effort was aimed at multi-functioned base operating support activities that included the fuel farm, supply, ground electronics, transportation, central utility, electrical systems, water and sewage, communications, the galley, and others. There were 397 work positions involved in these activities.

During the five years from 1982 to 1987, there was significant effort and substantial manpower dedicated to completing the intricate procedures of the A-76 study at Fallon. A detailed management study of workload, equipment, and processes was conducted. This study supported a new, most efficient organization which became the foundation of the in-house bid. A lengthy solicitation, expressing the services to be bid on and procured, was developed for each of the 36 work functions included in the cost comparison. This document alone is nearly three inches high and was amended over 20 times. Unfortunately, all of this effort did not go smoothly, as indicated by the prolonged study period. There were numerous policy changes during this time, cost factor changes, requests for guidance from higher headquarters, personnel changes, and other events that caused the study to be changed, modified, and delayed. The long duration of the study, the complex procedures, and the many policy changes were not only difficult to keep straight, but they substantially contributed to uncertainty and decreasing productivity of the workforce. I might add that the analysts who conducted the study have estimated that the wages, travel, training, and administrative cost to conduct this study is in

the $8-10M range. You will see later that this cost was expended in order to save an estimated $480,000 over a five year contract.

As the cost comparison moved along, the union and the employees tried to stay informed and to make systematic input concerning workload accuracy and productivity improvement ideas. Although the official word was "we want your ideas," we found that if we questioned any specifics, our noses were pressed against the outside of the glass. As a last resort, we had to write a series of letters and memos expressing our concerns and asking for information. At the same time, we found that our inquiries often brought conflicting replies to the same question, which led us to feel that key cost factor items had not been clarified as late as 1986 and 1987. When your livelihood and future are on the line, these kinds of answers -- yes today; no tomorrow -- do not bring a warm, secure feeling.

A second serious trend also began to appear during the 1985-1986 timeframe. This was the indication that each time that guidance was sought from higher headquarters or that an "off-station" review was conducted, the in-house bid went higher. In other words, if the Fallon management analysts requested interpretation or guidance on a cost issue from higher headquarters, the reply consistently drove the in-house bid higher and, therefore, less competitive. This trend cast a long, dark shadow over the chances of our in-house bid being the winner.

Bids were eventually opened in April 1987: We lost. The in-house bid came in at $66M. The lowest contractor bid was $63M, submitted by Morrison-Knudsen (M-K) Industries. At this time, the Navy announced that M-K was the apparent winner of the cost comparison by $3M, or $600,000 savings annually for the 5 year contract period.

In early May, AFGE Local 1841 submitted an A-76 administrative appeal to the Navy citing cost comparison errors in the in-house bid totaling nearly $8M. These cited errors included major amounts in military labor costs, duplicative labor costs, and contractor deductions for a thrift savings plan. In the case of each alleged costing error, we cited specific information and violations of governing regulations. After review of our union appeal, the Navy substantiated nearly $2M in cost comparison errors. This adjustment to the in-house bid left the contractor "winning" margin at $1.2M or $240,000 per year for the 5 year contract. It is interesting to note that two of the major items in our appeal -- costing of military labor in the galley and fuel farm duplicative workload -- had been specifically challenged in union correspondence written in 1985, 1986, and early 1987. In each reply to our letters, we either got conflicting answers or were told "don't worry about it, we'll fix it." When the bids were opened, these errors had not been fixed and, in my view of the rules, some of them have yet to be corrected.

The study at this time was into July of 1987. Based on the union appeal and the narrow bidding margin, Senator Harry Reid requested the Secretary of the Navy to investigate the Fallon NAS

case. The Secretary agreed to review the cost study with representatives of the Department of Defense Inspector General and the Navy. This group conducted a review at Fallon NAS and identified almost $.8M in additional errors in the cost comparison. At this point, the "winning" contractor margin was $480,000 for 5 years -- or $96,000 per year. Now, you will recall that this purported savings resulted from a five year effort that is estimated to have cost $8-10M to conduct. The people at Fallon hardly view this as a government "savings" program.

Mr. Chairman, the A-76 study at Fallon NAS is a sad story. On November 14, 1987, the Navy terminated (RIFed) the workers that had been providing base support. We are now entering the darkest holiday season that we've ever known. We ask "what did we do wrong?" We worked hard and we worked long. We came to our jobs in bad weather, year in and year out. We served our government.

We now ask that you pass S-909 and other legislation that will bring the contracting out program out of the closet. As a country, we need to make the rules equitable, to bring accurate information out into the sunshine, and to insure that all the players -- taxpayers, agencies, communities, and contractors -- get a fair shake.

Thank you.

Statement of

Eileen D. Cooke, Associate Executive Director
AMERICAN LIBRARY ASSOCIATION

before the
Subcommittee on Federal Services, Post Office, Civil Service
Senate Commitee on Governmental Affairs

on
S. 909, Legislation to Require Government Agencies to Turn
Back to the Treasury Savings from Contracting

December 17, 1987

My name is Eileen D. Cooke, Director of the American Library Association's Washington Office. The American Library Association is a non-profit educational organization of more than 45,000 members many of whom are library trustees, educators, and professional librarians who work in libraries of research, business, industry, academic and health institutions, in schools and public libraries, and in libraries of federal, state, and local government agencies. We have members who are federal employees working in federal libraries, and members who work for contractors in federal libraries.

Our primary concern is the quality of service in all libraries. That quality depends primarily on two components: first, on the professional skills and competencies of the library and information specialists responsible for managing or providing service to a library's users; and second, on the continuity and retention of a professional and nonprofessional staff to provide the corporate memory and core capability required to properly and effectively handle requests about an organization's policies, past activities, missions, and functions.

We believe that S. 909, the "Commercial Activities Contracting Act of 1987," will help ensure elements of accountability, responsibility, equitability, and prudence which are absent from the Administration's

contracting program. We support the provisions of S. 909 which require that all amounts saved as a result of contracting in accordance with Office of Management and Budget Circular A-76 be returned to the Treasury (Sec.2(a)) and that employees of an executive agency be consulted before contracting determinations are made by the agency head (Sec. 3).

Because of a contracting anomaly involving the use of volunteers which has come to light in the National Oceanic and Atmospheric Administration (NOAA) determination to contract out its Central Library in Rockville, Maryland, we hesitate to endorse the provision of S. 909 that manpower savings resulting from such contracting be made permanent(Sec. 2(b)). Although we are in favor of manpower savings, we find it questionable that the advantage of permanent manpower savings can be realized if the quality and continuity of government services depends on volunteers coming forward.

The requirement in S. 909 to return savings from contracting to the Treasury provides an accountability which is lacking under the methodology sanctioned under Executive Order 12615 of November 19, 1987, Performance of Commercial Activities, which provides that:

> A department or agency proposal may reflect retention of expected first-year savings as negotiated with the Office of Management and Budget for use as incentive compensation to reward employees covered by the studies for their productivity efforts, or for use in other productivity enhancement projects;....

This provision could provide a moral conflict of interest for those federal employees who are the deciding officials about whether or not a given government function will go to contract since they could personally benefit from the loss of jobs by their colleagues. At the same time, this pool of "savings" could provide an unappropriated fund for the agency and undermine overall accountability.

Executive Order 12615 also provides that expected yearly budget savings from the privatization of commercial activities are to be included in each federal agency annual budget proposal to OMB. If the expected savings are as suspect as those projected by NOAA for the contracting out of its Central Library, then we hope Congress will take a very careful look at the Administration's continuing push for the privatization of government activities. The projected savings for turning over NOAA's Central Library for contractor operation raised questions because the contractor's bid decreased each year, thus increasing the projected savings. When the General Accounting Office reviewed the contractor's bid, it revealed startling information with profound implications for the future of public service in this country, and for the professional future of librarians in and out of the federal government. Responding to the allegation that "The inaccurate solicitation sets the stage for expensive contract modifications by which the contractor, who has 'bought in,' can increase profits without competition," GAO reported:

> According to information in the contract file, this decrease was based on the assumption that volunteer staff will be used and such use will increase by 0.5 staff years each year. (General Accounting Office, "Contracting Out: National Oceanic and Atmospheric Administration's Central Library" (GAO/RCED-87-184), August 1987, p. 12)

Volunteers to displace federal workers?

The American Library Association is astonished that NOAA management would be willing to accept a bid to contract out the library based on the assumption that the contractor's costs would decrease in the out years because "volunteers" would come forward to help staff one of the federal government's key scientific and technical libraries. There are at least two things wrong here---first, where do these volunteers come from, what are their qualifications, and who controls them; and second, isn't it against the law for unpaid

volunteers to replace either civil service employees or to work unpaid for the government contractors? Furthermore, what happens to the contract and to service if the "volunteers" quit? If this concept of "volunteer" service were to be carried out in other parts of the Department of Commerce, we would conceivably have "volunteers" from the business community helping in preparation of critical economic data! Are we going to eventually have "volunteers" replacing medical staff at our Veterans hospitals?

Futhermore, we consider it unconscionable for NOAA to award a contract based on cost alone to a commercial firm which proposed the use of unpaid workers when neither the competing federal employees nor the other bidding commercial firms had the same advantage. It is apparent that the competing proposals were not equivalent bids and that the NOAA A-76 office has applied two sets of rules in the preparation of the bids---one set for the private sector and one set for the civil service group. This is not fair competition. We urge that the winning contractor not be given any opportunity to amend their best and final cost proposal unless the government employees who currently operate the library are given the same opportunity. If saving money is really NOAA management's goal, the present staff could operate the library responsibly, cost effectively, without volunteers, and with a continuity of service reinforced by institutional memory. NOAA should start over with a total rebid as the only equitable and prudent course the government should take.

We understand that the Departments of Commerce and Labor have provided NOAA with legal opinions that the Service Contract Act was inapplicable to the winning contractor's proposed use of "volunteers" to operate the NOAA Central Library. Since this development adds a whole new dimension to the ability of federal employees to compete in the A-76 environment, we trust that Congress

will review the Commerce and Labor interpretations of the Service Contract Act to determine their legality.

We also hope that Congress will look into what appeared to be a pressure campaign on GAO by NOAA agency personnel with a direct stake in the outcome of a GAO review. According to an article by Lee Bandy, "Probe into Bidding Meets with Resistance," in the July 14, 1987, Columbia, S. C., The State, NOAA management pressured the GAO "...to speed up its investigation in an apparent effort to avoid a thorough review. 'They want GAO to whitewash the whole thing,' charged a government official involved in the investigation." Mr. Bandy's article also indicated that NOAA and the potential contractors are anxious to have the contract awarded.

Foreign control of federal libraries

The winning contractor selected to operate the NOAA library is a wholly owned subsidiary of a Dutch company. Why should a foreign owned firm be permitted to displace federal employees by underbidding them with the use of unpaid labor? In addition to this fundamental equity issue, ALA believes that Congress should consider the consequences of awarding the operation of this major federal scientific research library to a foreign-owned company in today's fiercely competitive global economy. GAO determined that there is no legal prohibition to a foreign-owned company entering into a contract to operate the library. That's the problem. We warned OMB of that fact in 1983 when they revised Circular A-76. We have alerted Congress at every opportunity to the risks of contracting out federal libraries because nothing in the procurement regulations would prevent a Japanese-owned company from bidding on and winning a contract to operate the Department of Commerce's library.

As for GAO's conclusion that because the NOAA library collection contains no classified information, any restrictions regarding access to the collection

for national security reasons are not necessary, we point out that there is a great deal of information in the NOAA Central Library collection which has military as well as economic value. The key issue here is not access, but control of this information. Depending on how it is used, by whom, and for what purposes, this data could support actions hostile to the national interests of the United States. For example, a knowledge of tides, currents, seasonal storms, and ocean thermal layers off the shores of the United States and other countries clearly has continuing significant application to possible military or covert actions including capabilitities of foreign submarines to operate against our naval and commercial ships. If Congress and the Administration are angry at the firms in Japan and Norway which sold the Soviet Union machinery needed to make Soviet submarines quieter, why would they permit a collection of unique holdings of data on weather, tides, ocean currents, and geomagnetism to be controlled by any outside contractor---much less a foreign-owned one?

We do not question the patriotism or motives of the announced winner of the contract to operate the NOAA Central Library, but we certainly question the prudence of the government contracting out key components of its information structure at the same time it worries about technology transfer.

NOAA's irresponsibility

We do not believe that NOAA has acted responsibly in its stewardship of the library collection and facility, and of the NOAA library data resources. As far as we know, the government request for proposal failed to provide proper protection for the library database which would prevent the unauthorized transmission or use of data to which this contract would provide access. The government spent $1,600,000 to develop the Library and Information Services Division (LISD) computer system and another $350,000 to modify and keep it up

to date. We understand that NOAA is going to give the software to the contractors at no cost and with no use restrictions. The computer system has a proprietary value which the contractor can use, or sell for profit, and there is not one thing the government can do about it. The contract, if let, will open a cornucopia of opportunity to the contractor for access to the NOAA Central Library's research resources which the company can use to support business activities not within the scope of the NOAA library contract---a potential bonanza of insider information.

NOAA has allowed the library collection to deteriorate in a building for over a year with no humidity or temperature control. The collection may also be asbestos contaminated due to faulty asbestos removal procedures in the facility. NOAA has refused to fund an inventory of the collection before it is turned over to a contractor. Such an inventory would have cost an estimated $200,000 and, as a necessary step in the conversion to contract, should have been added to the costs of contracting. How can NOAA account for the library collection as government property without such an inventory? If the inventory is conducted after the contract is awarded, an expensive contract modification will surely result.

It appears that the NOAA A-76 review of the Central Library did not give proper weight to the realistic cost of the winning bid. For example, one of NOAA's field libraries, located at the Mountain Administrative Support Center (MASC) in Boulder, Colorado, also went through an A-76 review in 1984, 1985, and 1986. This field library historically has had about one-third the size staff of the NOAA Central Library, and has had a collection and budget in the same proportion. Contrasting the process and results of the two libraries' A-76 reviews, an investigator formerly with the NOAA A-76 office noted that the MASC Library's in-house team <u>won</u> its A-76 competition with a bid of

$550,000; whereas, the Central Library lost its competition to a private bid of $400,000. The obvious question is: How can a headquarters library operation three times the size of the field library be adequately staffed with a contract at least 25 percent less in cost? Has NOAA acted responsibly to protect the government and the taxpayer's interests by accepting a bid which uses volunteers?

Ironically, in 1984, the Deputy Secretary of Commerce issued a report which identified NOAA's Library and Information Services Division among the top one-third of all DoC programs contributing to private sector productivity. LISD was third among such NOAA programs in benefit/cost ratio, and fifth in benefits assigned. The NOAA A-76 review, going on since April 1983, is one of the most protracted on record with four principal reviewers, four heads of the Library Division, and numerous changes in key staff in Contracting, Personnel, and the A-76 offices. Although a formal cost analysis of the review has not been conducted, the direct cost and the quality losses that have accumulated must far exceed any hypothetical benefits in contracting out this library. Almost two years ago, Rep. Gary Ackerman (D-NY) wrote an article for USA Today, "Going private can hurt the taxpayers" (1/15/86), in which he pointed out:

> The National Oceanic and Atmospheric Administration library in Rockville, Md., has had to rewrite its contract solicitation more than 10 times, and NOAA has still been unable to write an accurate statement of the library's work. I am convinced that this effort has cost the U.S. taxpayer far more money for outside consultants to study the library than its privatization could possibly save.

The Office of Management and Budget exerts a great deal of pressure on agencies to comply with its Circular A-76 through potential budget cuts and loss of job slots, and by claims of large savings to be gained by turning government functions over to the private sector. Yet in many cases, we believe that OMB's reputed cost savings in contracting out are superficial,

initial costs only and fail to consider the hidden costs of contracting. These hidden costs occur and occur again with every change in contract and within the contract period itself. This repetition of losses multiplies the cost to the government.

Hidden Costs of Contracting

Personnel. Contractors make a profit even in a traditionally low profit area such as libraries. Profit requirements are partially accrued by hiring staff at salaries below the recognized professional level. The contractor is aided in this direction by the failure of the government to establish the minimum requirements for the key personnel positions in terms of education, work experience, and where applicable, supervisory experience. The combined circumstance of government failure to establish an appropriate level of quality and contractor incentive can result in a work force with minimal level requirements and performance ability.

In a normal civil service environment, the staff would have the opportunity to grow in stature, experience, and professional capability during the next few years. In a contractor environment, costs must be kept to the low bid rate from year to year. Staff growth is not only not welcomed, it's actually a disadvantage to the contractor since to keep the individual the firm would have to increase the salary rate. Good staff people generally then leave for better paying positions adding to the high contractor turnover rate. With that departure goes all the training and knowledge accrued by that person. Since the contract has a finite life, the contractor generally does not make the effort to preserve that knowledge or expertise and pass it to another person since that might entail the equivalent higher wage scale. It is cheaper to hire another new staff person at the contractor's starting wage.

Thus, a cycle is underway which results in a minimal level staff subject to substantive turnover. There are real dollar costs to the government in lost knowledge and expertise, repetitive learning curves for the new contractor employees and the absence of collegial training and internship.

Since libraries are complex information structures, there is a significant time and effort requirement necessary to learn the intricacies of the collection and use them productively in responding to user needs. The contractor turnover and the obvious limited term of the contract combine to reduce or limit the time and the willingness of the contractor to invest in the type and level of staff training required to efficiently and productively exploit the library resources. OMB's cost equation fails to recognize the personnel experience level never reached and/or the productivity foregone.

Contractor charges. Contractors charge for overhead, fringe benefits, general and administrative expenses, handling charges, and other fees. In contracting out accounting, there is a gray area of contractor charges. The methodologies of the accounting methods may vary, but several line items exist which are closely guarded comparative elements. For large contracts that are achieved under source evaluation board methods, those costs elements receive close scrutiny by the cost and pricing staff of the government agency. Smaller contracts and particularly 8A minority contracting operate under less rigorous environments. In 8A type contracts there is less scrutiny of the costs elements at the start of the contract and thereafter. Contractor labor costs may be quite modest for dollars paid to staff. Yet, the contractor may include a substantive charge for a company line item such as "general and administrative expense." Opportunities exist for diversion of costs into company level items to the detriment of personnel salaries which remain at depressed levels. The bottom line of costs still remains competitive, but the government may not be getting its worth in personnel value.

"Capping" library program growth and development. Contracting out has had an adverse effect on federal library program development. Under the pressure of the government Most Efficient Organization study and cost reviews, federal library managers generally feel under severe constraints and forego future development programs.

The contractor bids the task at a set dollar level and cannot undertake any new tasks of significant magnitude. With few exceptions, the contractor is not likely to suggest any new areas of substance for development because of the cost constraint. Under such circumstances, the readiness capability of the federal library is nonexistent. This inability to respond in a timely manner reduces the value of the facility to the agency and increases the risk to the federal government. Indeed, I am aware of one instance in which a federal library complied with a court order to build a database in a matter of weeks. This would have been difficult if not impossible to achieve had the library been a contract operation.

In a period when the information age is flourishing, federal libraries seem to be "capped" from participating in this forward surge. Little federal leadership is possible under these circumstances. In past years, the development of programs in agencies such as the National Aeronautics and Space Administration, the Department of Energy, and others, gave birth to many private sector spin-offs and marketable products. Now, the ability of the government to nurture such original programs is greatly curtailed. This loss is adverse to the government employees working under diminished resources and to the private sector marketing effort. Professionally, this loss diminishes the government's ability to maintain world leadership in a competitive era.

The loss of progress is a hidden, major cost of contracting.

Resource Sharing. Interagency sharing of federal library and database resources is threatened by contracting. Libraries of all types, including

federal libraries, have routinely lent their materials and furnished information to outside requestors. This has been established practice for almost a century. Traditionally, federal libraries have served as primary information resources to their agencies' staff and contractors, to state and local governments, to businesses, industry, scientific and academic institutions and to the general public. For example, on a weekly basis, approximately 91 outside organizations use the facilities and resources of a library in a federal laboratory located in Maryland. The library's patrons include scientists from private industry, the laboratory's own contractors, staff from the Central Intelligence Agency, the Naval Research Laboratory, NASA, IBM, Science Applications International, Inc., BDM, and GTE. This same library lends more materials to universities in the Metropolitan Washington area than it borrows from them. Now it seems, A-76 threatens to erode if not terminate the sharing of federal information resources. What will be the costs to the taxpayer of duplicating "unshareable" federal information resources? How will these substantial new costs be factored into the A-76 equation? What of the needs of the American public who will no longer be furnished access to the information resources and databases of federal libraries? ALA believes that the contracting out of federal libraries could increase exponentially the costs of acquiring, generating, and storing much of the information collected or created by federal agencies today. ALA also believes that contracting out federal libraries will reduce the public's access to a substantial body of information which was acquired and is maintained with tax dollars. Everybody but the contractor will be losers.

Increased operating costs

If federal agencies comply with all applicable statutes and regulations, contracting out the total operations of a federal library will burden the

government and the taxpayer with greatly increased operating costs. Federal procurement laws and regulations stipulate that only employees of the U.S. government are authorized to obligate the government for purchases of goods and services. For federal libraries, this means that purchases of all books, periodicals, interlibrary loans, furniture, equipment, ADP hardware and software, online databases, online shared and turn-key systems, translations, seminars, training courses and demonstrations must be authorized and monitored by government employees, not only because federal funds are being obligated and expended but also because 90 percent of these purchases are placed with private sector suppliers. In many federal libraries today, a single federal employee makes a decision to purchase and then implements that decision. However, under A-76, this operation must be bifurcated and at least two persons---one federal, one contractor---must become involved. Where is the savings to the American taxpayer of such an artificial arrangement?

Technical specifications for activities such as laundry and dry cleaning and food service can, for the most part, be tightly written and precisely monitored to assure that quality is maintained. But in the case of intellectual products and services such as those provided by libraries, technical specifications are difficult to generate for ongoing operations. Ongoing operations are expensive to monitor because adequate oversight requires duplicating much of the work of the contractor. Indeed, the creation, implementation, and monitoring of acceptable specifications for library products and services will defeat the cost reduction purposes of Circular A-76.

In addition, maintaining a full range of information services to an agency's staff in an A-76 library will either increase operational costs substantially or will violate section 7.c.(5) of Circular A-76, because both federal law and Circular A-76 prohibit contracts which establish a situation

tantamount to an employer-employee relationship between government and contractor personnel.

Contracting out entire federal libraries will produce artificial, expensive bifurcations of agency information programs. In many agencies, responses to outside inquiries are not found in published sources. Many agencies have no centralized files or even complete current lists of their publications and issuances. Therefore, routine responses to information requests require contacting program units within the agency to get the data needed. Is such a function an appropriate one for contractor personnel, particularly in sensitive areas such as regulatory activity and international negotiations?

Major risks in contracting out entire federal libraries

. Contracting out can fail to provide an environment adequate to protect sensitive, competitive, and proprietary documents which are included in the collections of many federal libraries.

. Contracting out can endanger national security either by eliminating altogether library expertise in the ranks of U.S. government workers or by releasing control of the government's information apparatus and databases to organizations which are components of or controlled by foreign interests.

. Contracting out libraries in their entirety reduces their readiness capability to respond to agency emergencies.

. There is a real and present danger that federal library contractors could use their positions to advance interests other than those of the government. In the course of running a federal library, contractors will acquire information about the agency and its programs which could be used to undercut the competition when bidding on renewal or new contracts in the same agency. Wall Street calls this dealing in insider information.

Appropriate contracting

At this point, you may be surprised to hear that ALA agrees that federal libraries should contract out some of their operations. In fact, federal libraries have for years contracted many of their services and will continue to do so. This year, federal libraries spent about $50 million with private sector contractors obtaining necessary services and goods through Fedlink, the Federal Library and Information Center network. What they retained in-house have been the kinds of services and contacts with their agencies' staff which support very basic, very sensitive governmental functions.

However, the appropriate contracting out of services is what landed library operations on the A-76 list of commercial activities. At a library meeting several years ago, an OMB official explained that the activities listed as commercial in Attachment A to OMB's Circular A-76 were selected on the basis of a printout produced by the General Services Administration from the Federal Procurement Data System. If an activity appeared on that "list," it was automatically placed on the commercial activity list without any further criteria applied. However, when ALA's Federal Librarians Round Table asked GSA to recreate the library portion of that printout, GSA said it could not be done. We found it curious indeed that an important portion of a printout OMB said it used to develop its A-76 list could not be replicated. Lacking the evidence OMB used for including functions on the A-76 list and lacking a clear definition of what constitutes a commercial acitivity, ALA believes that tagging federal libraries as commercial is not justified.

Three years ago, an OMB memorandum from OMB Deputy, Joseph R. Wright, Jr., included federal libraries as one of 14 activities targeted for "productivity review." The Memorandum, dated September 27, 1984, stipulated that, except for the 14 activities targeted, federal functions operated by 10 or fewer full-time employees should not undergo review. If it doesn't make

sense to review those smaller activities outside the 14 categories targeted, then why review them just because they are in one of the 14 categories? Circular A-76, on the other hand, authorizes agencies to contract out 10 or less FTE functions without first conducting cost comparison studies. Since 88 percent of all libraries in the U. S. government are staffed by 10 or fewer employees, most federal libraries enjoy the dubious dual distinction of simultaneously being targets for contracting out by fiat under A-76 and targets for government wide review under the OMB Memorandum of September, 1984.

Nowhere but in the federal government are libraries considered "commercial activites"

With the exception of the federal government, libraries are not considered products which can be purchased off the shelf. If they were, if significant cost savings were possible with no loss of quality or other adverse effects, we would expect to find corporations in large numbers contracting out their entire library operations. Such is not the case. Corporations are no less concerned than the government about costs and operational efficiency. Why then should the federal government rush to divest itself of an activity which nonfederal organizations have determined is best managed and operated in-house?

Two years ago, when Rep. Major Owens (D-NY) testified on the implementation of Circular A-76, he said:

> I think we are faced with a great danger of an erosion of the whole Civil Service System....The libraries are a key part of this because in addition to contracting out the obvious kinds of commercial activities, as they call them---they have lumped libraries in here because it is, as a professional activity...the exception to the rule, but it is the exception on which they will base additional policies....This is the first professional service and it will be used as a precedent and a justification for contracting out other professional services. In other words, everything is fair game. Everything that can be contracted out, will be contracted out. And in that process...they can channel contracts to

> loyal supporters. The accountability is almost zero in the final analysis---the further you get away from the original contracting process, the less accountability you have, and you have a boondoggle. (Office of Management and Budget Circular A-76: Hearings Before the Subcomm. on Human Resources of the House Comm. on Post Office and Civil Service, 99th Cong., 1st Sess., October 30, 1985, p. 94)

Where Do We Go From Here?

On January 21, 1987, ALA's Council passed a resolution concerning Circular A-76. In it, ALA urged Congress to declare a moratorium on all contracting out of federal libraries. In earlier resolutions, ALA has noted that OMB's classification of federal libraries as commercial activities is inaccurate and inappropriate and constitutes a major distortion of the nature and purpose of all libraries. ALA has urged the Director of OMB to remove libraries from the Attachments to A-76 and from the list of activities targeted for A-76 review throughout the federal government. ALA believes that Circular A-76 may well contribute to a devastating degree of national amnesia, because if the present network of federal libraries deteriorates or is destroyed, it cannot be reproduced at any price. Therefore, ALA urges this Subcommittee and the other Members of Congress to exert influence to remove libraries from the A-76 list of commercial activities.

With regard to the situation at NOAA, ALA recommends that:

. Congress should delay the award of the contract to operate the NOAA Central Library until questions about the legality of NOAA's acceptance of a bid using volunteers have been resolved.

. Congress should act to prevent NOAA from giving the winning contractor any opportunity to amend their best and final cost proposal unless the government employees who currently operate the library are given the same opportunity.

. Congress should ask the General Accounting Office to review the legality of contractors bidding "volunteers" to carry out contracts under the Service Contract Act.

. Congress should examine what appeared to be a pressure campaign on GAO by NOAA agency personnel with a direct stake in the outcome of a GAO review.

. Congress should consider the consequences of awarding contracts to operate federal libraries to subsidiaries of foreign-owned companies.

. NOAA should start over with a total rebid of the NOAA Central Library as the only equitable and prudent course the government should take.

ALA is most grateful for this opportunity to state our views. I shall be happy to answer any questions you may have.

ATTACHMENT

Resolution on Foreign Control of Federal Libraries
and Document Depositories

WHEREAS, The information resources of the federal government are vital to the security and economic well being of the United States; and

WHEREAS, Federal libraries and document depositories provide crucial support and unique resources for the development of policies, implementation of programs and ongoing operations of government agencies; and

WHEREAS, Federal libraries and librarians are key to effective utilization of these information resources, performing an inherently governmental function; and

WHEREAS, Federal libraries provide the longitudinal corporate memory of their agencies and their staffs, perform agency evaluations and actions under the Freedom of Information and Privacy Acts; and

WHEREAS, The American Library Association has opposed contracting out of federal libraries; and

WHEREAS, The Administration has expressed its concern regarding the sensitivity of certain types of federal information; and

WHEREAS, This Administration is using Office of Management and Budget Circular A-76 to force the contacting out to organizations outside the federal government of the information services provided by federal libraries and document depositories; and

WHEREAS, Circular A-76 does not restrict contracting for federal library and depository services only to United States firms and organizations; and

WHEREAS, At least one major departmental library and key functions in other federal libraries are already contracted out to U. S. subsidiaries of foreign firms; and

WHEREAS, It has been announced that a foreign owned firm is to be the successful bidder on another A-76 action which would allow this firm to take over the operation of a major scientific library in the federal government; now, therefore, be it

RESOLVED, That the American Library Association believes it is not in the best interest of the American people to contract out federal information programs and organizations to foreign owned or controlled firms; and, be it further

RESOLVED, That the American Library Association urge the Congress of the United States to declare a moratorium on all contracting out of federal

(over)

libraries and document depositories and to hold further hearings on this matter; and, be it further

RESOLVED, That copies of this Resolution be transmitted to the President of the United States and his National Security Adviser, the President of the Senate, the Speaker of the House of Representatives, appropriate committees of the Congress, and the Director of the Office of Management and Budget.

Adopted by the Council of the
American Library Association
Chicago, Illinois
January 21, 1987
(Council Document #26.7)

[From the State/Columbia, S.C., July 14, 1987]

PROBE INTO BIDDING MEETS WITH RESISTANCE

(By Lee Bandy)

WASHINGTON.—An investigation of the bidding for the National Oceanic and Atmospheric Administration central library contract, requested by Sen. Ernest F. Hollings, D–S.C., appears to be meeting stiff resistance within the Reagan administration.

According to sources familiar with the probe, NOAA management has pressured the General Accounting Office to speed up its investigation in an apparent effort to avoid a thorough review.

"They want GAO to whitewash the whole thing," charged a government official involved in the investigation.

Hollings, chairman of the Senate Commerce Committee that has jurisdiction over NOAA programs, asked GAO in May to investigate alleged irregularities in the solicitation of bids for operating the central library in nearby Rockville, Md.

Agency management has been accused of engaging in deceptive practices, misappropriating money and covering up a federal investigative report in an effort to award a contract to a private firm, which is a subsidiary of a foreign-owned company.

Aspens Systems Corp., owned by the Wolters Samson Group of the Netherlands, is the low bidder. However, the award is being delayed pending final clearance by Congress.

NOAA librarians, who submitted an inhouse bid, have engaged in a vigorous effort to have the decision reversed. They charge that inaccurate costs factors were used in the review process, that their bid was prejudiced by the leaking of pertinent inside information to Aspens, and that NOAA authorities attempted to cover up an investigative report favoring their bid.

Based on their complaint, Hollings asked GAO, the investigative arm of Congress, to review the charges. He also requested that action on the contract be suspended until questions about the bidding process have been resolved.

Sumi Arima, the GAO auditor heading the investigation, said that he has been pressured by NOAA authorities to speed up the investigation. He declined to name them.

Sources later named William Matuszeski, director of NOAA's contracting office, as the person behind the pressure campaign. Matuszeski acknowledged that he phoned the GAO auditor but denied any impropriety.

"I just made a phone call to check on the status of the investigation. . . . I want to get this thing settled," he said.

According to internal NOAA memos, however, Matuszeski has been involved and has enlisted others to speed the GAO probe.

In a June 10 memo, Matuszeski complained about Arima seeking to broaden the investigation to cover the question of foreign ownership, a move he noted would take at least another month.

"Generally, he (Arima) seemed unconcerned about further delay and, if anything, looking to extend his assignment for a few more months. It probably was a bit too clear what I thought of this performance," Matuszeski wrote.

In a follow-up memo, he named others who had been recruited to pressure GAO.

Aspen executives met with Senate Appropriations Committee staffers last month and, according to Warren Kane, Hollings' aide on the panel, "the Aspen people were just horrified with the deal. They couldn't understand the holdup."

Kane questioned why NOAA is in such a rush to award the contract to Aspens Systems, suggesting the administration may be trying "to get the government privatized" before it leaves office.

Matuszeski ridiculed such talk, saying, "I just want to get the library back in operation."

The NOAA library has been closed since last October because of asbestos contamination and it could be some time before it is reopened, sources say.

Members of Congress have expressed concern about awarding a contract to a subsidiary of a foreign-owned company, fearing it could compromise national security and hinder efforts to restore U.S. competitiveness.

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, AFL/CIO
1313 "L" STREET, N.W., WASHINGTON, D.C. 20005
202/371-6644

TESTIMONY OF

MIKE LeFEVRE, VICE PRESIDENT

NAGE LOCAL R14-9

TO THE

SUBCOMMITTEE ON FEDERAL SERVICES,

POST OFFICE & CIVIL SERVICE

OF

SENATE GOVERNMENTAL AFFAIRS COMMITTEE

REGARDING

CONTRACTING OUT (S-909)

DECEMBER 17,1987

Good morning, my name is Mike LeFevre. I am a WG-9 Instrument Maker for the U.S. Army at Dugway Prooving Grounds in Dugway, Utah. I am also the first Vice-President with NAGE Local R14-9.

I am appreciative of this opportunity to appear before the subcommittee to relate to you our experiences with contracting out at Dugway, and to present our views on S-909.

Dugway Prooving Grounds is a weapons testing facility located in an isolated part of Utah, approximately 80 miles west of Salt Lake City, and 45 miles away from the closest town. The employees at Dugway are an unusually tight knit group--we think of one another as family. This arises in part because we are isolated from any other community and must rely on each other for many of the support functions usually provided by a community. In fact because of a shortage of housing in the area many of the civilian employees live in on base housing. We are also a relatively small installation whose employees work long hours so we'd better get along or life could be really miserable. The work at Dugway is hazardous (we do nerve gas testing) and there is a recognition that your life may in a very real sense depend upon your partner's job performance. We thus place a high value as a community on high work productivity whether it be from a janitor or engineer since we recognize that all jobs have an impact on our lives.

In 1981 and 1982 we learned that the Army was considering contracting out 135 federal jobs in the facilities engineering function at Dugway. This is a particular threat at Dugway since not only does it jeapordize a workers job but a seperated worker would also be evicted from base housing. During the cost analysis study the union, effected employees and local management all worked very hard to develop a performance work statement which adequately reflected the full range of duties. Unfortunately on two occasions these statements were rejected by T-CONN, the organizational superior to Dugway. Following the second rejection T-CONN took responsibility for drafting the performance work statement and submitted the final statement used in the bid process.

In May of 1982 the Army opened all bids and discovered that Hawthorne Aviation had the lowest bid. Hawthorne's bid was $4,224,432 for a five year fixed price contract. This figure was $161,406 lower than the in house bid of $4,385,838. The five year cost savings projected under the cost study was only $32,281 per year, which is less than the salary of one GS-11 employee.

The union immediately filed an appeal in accordance with the applicable provisions of OMB Circular A-76. We raised six major issues; pay raise attributed to federal employee was too high, administration costs attributed to the contractor was too low; state of Utah privilege tax not attributed to the

contractor and training housing, and overtime costs attributable to the contractor were all too low. Athough time has demonstrated that the union was correct in its appeal position on all the issues, for brevity sake I will address only the question of the pay raise.

At the time Dugway developed its in house bid it was required by OMB to estimate an FY83 pay increase of 7% for the general schedule, and 6% for the wage grade employees. The actual increase provided was only 4% which decreases the government's bid by $246,800 over the five year period making it more cost effective to perform the function in house. The government learned that the increase would be limited to 4% during the pendancy of the union's appeal. The administrative appeal board in rejecting the union's appeal specifically recognized the accuracy of the union's pay raise figures and that in fact it was more cost effective to perform the function in-house. Although afraid to take the responsibility to reverse the decision to award the contract the board did recommend that a final decision be delayed until a "higher headquarters" review was conducted.

The base commander George A. Currugh subsequently conducted his own study and on August 11, 1982 published those reuslts in a letter to the Pentagon asking that all solicitations be cancelled and the functions remain in house. In his letter the base commander indicated that the contract would directly cost the government an additional $823,554 in the first three years alone. In addition he indicated contracting to Hawthorne would decrease employment in the local area by 4.8%, reduce personal income by 7.9% and reduce business volume by 12.4%. In addition he projected that 53 employees would be seperated from the government including five handicapped, and two severely handicapped, and 12 civilian families would be evicted from on base housing. He also estimated that 61 employees would be downgraded.

In response to this letter from the base commander the U.S. Army Audit Agency conducted an audit at Dugway. Its results confirmed that the 4% pay raise figure was accurate and that if used it resulted in a cost savings advantage to the in house option. The Army Audit Agency also published the opinion of the GAO that the cost figures should have been changed to reflect the more current pay data prior to bid opening.

During this period of time the union was working with the Utah delegation who urged the Army to maintain the function in house. The delegation cited existing regulations which allowed the government to reject a possible contract at this point if there were "compelling reasons". There was also considerable press coverage in the local newspaper, none of it favorable to the government and all of it urging the Army to keep the function in house. Unfortunately for the taxpayers Hawthorne Aviation apparently also had its supporters in Congress, and despite the overwhelming evidence that it was more costly to

contract out, the Army awarded the contract to Hawthorne.

The news of the award of the contract shocked the employees at the base. We thought the A-76 program was designed to save money and couldn't understand how the Army could award a contract knowing it would cost more money and disrupt a closely knit highly productive workforce.

The performance of the contract particularly during the first year was disasterous. During this period of time the snow wasn't plowed, the bathrooms weren't cleaned, electrical work wasn't done, a pole was put in upside down and a number of other errors were committed. Frequently federal employees who had been reduced in rank were called on to perform their old duties when the contractor was unable or unwilling to perform these functions. Not all the blame for this shoddy performance lies with the contractor however. As you will recall, I indicated that the performance work statement developed by Dugway employees and management was rejected by T-CONN for one developed at command level. This PWS turned out to be grossly incomplete. Incredibly T-CONN had not even included snow removal in the PWS for a test facility located in Utah! During the first year alone the contract was modified over 100 times, each time costing the government more money to accomplish duties previously performed by federal employees for a fixed rate of pay.

Hawthorne's failure to perform under the contract was so serious that the contract officer at Dugway responsible for administering the contract on August 3,1983 sent a letter to the contractor identifying five major areas in which Hawthorne was in breach and threatened to terminate the contract. The Department of the Army reacted immediately to this demand letter with an August 22, 1983 letter which advised "discretion" in enforcing the contract because of the "intense involvement of Congress". The contract officer recieved and understood the message.

The evidence of Hawthorne's subsequent performances suggests the Army would have been well advised to allow the contracting official to prform his job and been less concerned with the " political implications" of enforcing the terms of the contract.

As you will recall the Army awarded Hawthorne a five year (1983-1988) contract for $4,224,432. The actual expenditures under the contract were the following..

FY83 May to October -	$414,153
FY84 (full year) -	$2,735,966
FY85 (full year) -	$3,365,143
FY86 October to April -	$2,139,099

Thus the Army spent $8,654,361 for 3 years of performance. If the Army had allowed the contract to go the full term (5 years)

it is likely to have cost $14,423,935. This is over three hundred and fifty percent greater than the cost of in house performance over the same period or a waste to the taxpayers of over $10 million dollars.

Mr. Chairman, contracting out at Dugway disrupted a closely knit productive family of workers who took great pride in our work as individuals, and as a team. In our place the Army put a private contractor who performed in a wholly inadequate manner not in keeping with the high standards we set for ourselves and at a cost dramatically greater. What made this situation more troubling is that the Army was aware in advance that contractor performance would be more costly, and still elected to proceed to the contract.

If I may, there are changes in OMB A-76 which I would suggest in light of my experience at Dugway. We need a genuine appeal process, before an independant, objective entity which has authority to decide contested cases involving the broadest parameters of contracting out questions including performance work statements, and all aspects of the cost comparison. Dugway is telling evidence of the blatantly unjust results which can be perpetuated by an unchecked A-76 bureaucracy. Secondly no final decision pursuant to the award of the contract should be made until after the appeal process is completed, so that neither party is put in a disadvantaged position.

NAGE is supportive of S-909, legislation which would require that manpower and financial savings projected as a result of OMB circular A-76 be returned to the Treasury. It has been our contention that much of the savings claimed by OMB for contracting out is fictitious. This legislation calls OMB's bluff and provides them with the opportunity to put their money where their mouths are so to speak. We would anticipate that if OMB is confident in its public assertions as to the cost savings attributed to A-76 that it would heartily endorse S-909. This bill would also insist on a greater accounting of the savings or loss under A-76, an objective which OMB has thus far resisted. The bill would also insist that any savings realized by contracting out be used to reduce spending and not reprogrammed for other agency purposes.

Mr. Chairman I thank you for the opportunity to appear and testify this morning and would attempt to answer any questions the committee cares to ask.

NATIONAL
FEDERATION
OF FEDERAL
EMPLOYEES

NFFE

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STATEMENT BY

RON YAGGIE

CHAIRMAN, COMMITTEE ON HUMAN RESOURCES
LOCAL 493, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

CHANUTE AIR FORCE BASE

RANTOUL, ILLINOIS

BEFORE

THE SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE
AND CIVIL SERVICE

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

DECEMBER 17, 1987

Mr. Chairman and Subcommittee Members:

My name is Ron Yaggie. I am Chairman of the Human Resources Committee of the National Federation of Federal Employees Local 493, located at Chanute Air Force Base in Rantoul, Illinois. I have been a construction inspector and a military family housing maintenance contract monitor for six years. I appreciate the opportunity to present on behalf of the employees our concerns about the contracting out abuses at Chanute. We have observed many problems with contracting procedures in recent years. We estimate that Chanute AFB has paid government contractors one million dollars in cost overruns alone in various contracts since mid-1986.

Probably the greatest problem with the Office of Management and Budget Circular A-76 program is that the Performance Work Statements (PWS) used to reflect a function's workload frequently fail to state accurately the actual amount of work performed. At Chanute, we have found the most frequent cause of incomplete work statements is the failure of the management study team to interview the employees.

This is a great advantage to the contractor whose bid is based on the understated PWS. When a contract is awarded, the contractor is obligated to perform only the amount of work specified in the PWS. If the agency needs to produce the same level of work performed by its former employees, and the work is not specified in the PWS, it must pay the contractor for costly modifications.

For example, the Grounds Maintenance function was contracted out in late February 1986. The original bid by the in-house function was $2,143,222 (see attachment 1). The winning contractor's bid was $47,950 less expensive, and came to a total of $1,939,160. However, since the contractor has taken over performance of the Grounds Maintenance activity, a total of nineteen amendments to the contract have been approved.

A close examination of these amendments shows that work was added to the contract which should have been included in the original Performance Work Statement. The total cost increases of these amendments (which do not include any wage increases required by the Fair Labor Standards Act and the Service Contract Act) is $221,880. This amount is $173,930 more than the government would have paid to maintain the function in-house.

Particularly disturbing is the information included in the explanation for contract amendment number 7. It states "For the period of 1 Mar 86 through 30 Sep 86 the Grounds Maintenance workload exceeded the Government estimate by 80 percent. An equitable adjustment for the 65 percent variation was negotiated. As a result of the negotiation,

the contractor shall be paid $50,000."

Clearly, Mr. Chairman, this gross error by the management study team resulted in the decision to perform the function by contractor, and paved the way for additional costly contract modifications. Another contract in the Furnishings Management function at Chanute also contained errors in workload estimation leading to a cost increase of approximately $150,000 (see attachment 2).

Ironically, once a function is contracted out, it is virtually impossible to return it to in-house performance, even when cost overruns are as outrageous as those in the Grounds Maintenance function at Chanute. Officials at Chanute informed us that they will not revisit a contract for cost overruns unless directed to do so by Air Training Command (ATC). Since it is not in the activity's best interest to acknowledge to the command that contracting mistakes costing thousands of dollars have been made, ATC rarely requests re-evaluation, despite the fact that the cost increases are compounded over the life of the contract.

Unfortunately, it is also difficult to predict such cost overruns before the function is contracted out. Because the appeals process for A-76 reviews is extremely narrow in scope, losing bidders rarely can prove that no responsible contractor could perform the function for such a low estimate. Instead, we are forced to suffer through the poor performance and cost overruns for the entire contract period.

We have also experienced serious problems with contractors' failure to perform functions after the award. For example, last year a portion of the base commissary was contracted out. The contractor was unable to perform the work for the original bid amount, and was unable to meet payroll. The government was forced to place the contractor personnel on the government payroll to prevent loss of services, and is currently soliciting a new contractor to take over the function.

Currently, NFFE Local 493 is protesting the Air Force's recent decision to contract out the Consolidated Maintenance Squadron at Chanute to Raytheon Services, at an estimated savings of $6,000,000 over five years. Raytheon's bid of $10,100,000 is half the second lowest contractor's bid of $20,000,000, and significantly lower than the current in-house estimate of $16,200,000. We are particularly concerned that the low contractor's bid is unrealistic.

We have also experienced problems with the revolving door syndrome at Chanute. Last month, Chanute conditionally awarded the performance of the Trainer and Equipment Maintenance function to Raytheon. During the first week of

July 1987, a former chief of operations for the function who was then working for Raytheon, approached current employees in the function to fill out employment applications for the corporation. Why Raytheon was so confident that it would be awarded the contract then under study has raised questions that Raytheon may have been given an unfair advantage. We are currently appealing to the General Accounting Office (GAO) for an investigation into a possible conflict of interest (see attachment 3).

This myriad of problems with contracting out at Chanute has increased the cynicism felt by employees, and resulted in a serious decline in morale. The knowledge that employees have lost their jobs to a contractor who then turned around and charged the government for outrageous, unwarranted sums of money is extremely demoralizing. Worse still, we realize that it will not be the last time such atrocities occur, unless Congress is willing to take action to prevent them. The employees at Chanute Air Force Base believe that if the American taxpayers really knew their money was being wasted in this manner, they would insist on reform.

I am happy to support S. 909, Senator Harry Reid's bill to require the government to return any savings achieved from contracting out to the U.S. Treasury. If the Department of Defense is so convinced that contracting out government services is a taxpayer's dream, then we suggest that they use the savings to reduce the nation's deficit. This legislation would require DOD and thus, the government's contractors, to behave in a more responsible manner. More importantly, if no savings is accumulated or if contracting out is actually shown to cost more money that the government had been spending, perhaps a serious re-evaluation of the program will be conducted. The employees at Chanute Air Force Base urge the bill's enactment with all due speed.

In addition, I propose the following additional measures be taken to prevent the abuse of contracting procedures:
(1) reevaluate the cost of a contract if it escalates in excess of 10 % of the original bid;
(2) update the cost comparison study at the end of the second contract year. If in-house performance would be less expensive, rehire the government workforce to perform the function.

In closing, Mr. Chairman, I would like to thank the subcommittee for its attention to the problems with contracting out in the Federal Government. I appreciate the opportunity to participate in this hearing, and I look forward to working with the subcommittee as consideration of the legislation proceeds.

That concludes my statement. I will be happy to answer any questions.

Attachment 1

SATELLITE

Agency USAF (ATC) Location Chanute AFB, Illinois Function Grounds Maintenance

COST COMPARISON FORM

In-House vs Contract Performance

Performance Periods

	Year 1 Cost 1 Mar - 30 Sep 86	Year 2 Cost FY 87	Year 3 Cost FY 88	Total Cost	Reference
In-House Performance Costs					
1. Personnel	$423,829	$568,094	$568,102	$1,560,025	1-5
2. Material and Supply	42,292	74,623	77,258	194,173	2-2
3. Other Specifically Attributable Costs	85,066	149,902	154,056	389,024	3-10
4. Overhead Costs	0	0	0	0	4-1
5. Additional Costs	0	0	0	0	5-1
6. Total In-House Costs	$551,187	$792,619	$799,416	$2,143,222	6-1
Contract Performance Costs					
7. Contract Price	769,860	523,380	523,380	1,816,620	7-1
8. Contract Administration	31,992	56,407	58,935	147,334	8-2
9. Additional Costs	0	0	0	0	9-1
10. One-Time Conversion Costs	0	0	0	0	10-5
11. Gain/Loss on Disposal/Transfer of Assets	(2,995)	0	0	(2,995)	11-1
12. Federal Income Tax	(9,237)	(6,281)	(6,281)	(21,799)	12-1
13. Total Contract Costs	789,620	573,506	576,034	1,939,160	13-1

COST COMPARISON STUDY
GROUNDS MAINTENANCE
Chanute AFB, Illinois

Decision

				Total	
14. Conversion Difference	$156,112			$ 156,112	14-1
15. Total lines 13 and 14	945,732	$573,506	$567,034	2,095,272	
16. Cost Comparison line 15 less line 6	394,545	(219,113)	(223,382)	(47,950)	

17. Cost Comparison Decision

_____ Accomplish In-House

_X_ Accomplish by Contract

In-House Estimate Prepared by: C. I. HART, JR. Det 1, 3314 MES C I Hart 21/10/85

In-House Estimate Reviewed by:
In-House MAJCOM Reviewed by:
Cost Comparison Reviewed by: Connie J Scott 25/11/85
Tom Blevins 27/11/85 by Connie J Scott

Cost Comparison Decision Approved by:

AMENDMENT OF SOLICITAT .N/MODIFICATION OF CONTRACT	CONTRACT ID CODE J	PAGE OF PAGES 1 | 2

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
F1160286C0030 P00003	4 AUG 87	F73SVS71520003	

6. ISSUED BY CODE
CTTC/LGC/BLDG 760
CHANUTE AFB IL 61868-5320
ADMINISTRATOR/SYMBOL: M. SKAMEL/LGCC
PHONE: 217-495-3808

7. ADMINISTERED BY (If other than Item 6) CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)
J & A ENTERPRISES, INC
P.O. BOX 15383
IRVING TX 75015

CODE 000KGJ95 FACILITY CODE

( ) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

(X) 10A. MODIFICATION OF CONTRACT/ORDER NO.
F1160286C0030

10B. DATED (SEE ITEM 13)
4 AUG 86

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
5773400 3076441 224650 A8 592.92 525900 AFO #1404 3345 CPTS/ACFMC/STOP 20 NET INCREASE $150,378

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

( ) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

( ) B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

(X) C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

( ) D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return ALL copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

a. THIS MODIFICATION IS TO EFFECT AN AGREEMENT TO REMOVE AND DISASSEMBLE 956 OLD WARDROBE UNITS IN BUILDING 306 AND ASSEMBLE AND INSTALL 956 NEW WARDROBE UNITS, INCLUDING 3 DRAWER CHEST INSERTS, IN THE SAME BUILDING.

1. THE CONTRACTOR, J & A ENTERPRISES, WILL REMOVE 956 OLD WARDROBE UNITS FROM BLDG 306 AND STORE IN P-7 DISASSEMBLED AND PALLETIZED. ALL NECESSARY DOCUMENTATION FOR THE TURN IN OF THE WARDROBES WILL BE COMPLETED BY J & A UNDER THE BASIC CONTRACT, AND ON A SCHEDULE TO BE NEGOTIATED WITH DRMO.

2. J & A WILL ASSEMBLE AND INSTALL 956 NEW WARDROBE UNITS, INCLUDING 3 DRAWER CHEST INSERT IN THE ROOMS OF BUILDING 306. THIS INCLUDES THE PICKUP ON THE ITEMS AT P-7 AND DELIVERY TO

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
A. G. Shupe, President	Contracting Officer
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED 9/2/87
16B. UNITED STATES OF AMERICA BY (Signature of Contracting Officer)	16C. DATE SIGNED

NSN 7540-01-152-8070
PREVIOUS EDITION UNUSABLE

30-105-03

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

EXCEPTION APPROVED BY NARS MAY 79

STANDARD FORM 36, JULY 1966 GENERAL SERVICES ADMINISTRATION FED. PROC. REG. (41 CFR) 1-16.101	CONTINUATION SHEET	REF. NO. OF DOC. BEING CONT'D.	PAGE	OF
		F1160286C0030-P00003	2	2

NAME OF OFFEROR OR CONTRACTOR

J & A ENTERPRISES INC

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	BLDG 306.				
	3. J & A WILL OBTAIN ALL TRANSPORTATION, TOOLS, DOLLIES, DOCUMENTATION, AND PERSONNEL TO COMPLETE THE TASKS DEFINED IN PARAGRAPHS 1 AND 2 ABOVE. THE NECESSARY DOCUMENTATION AND ADMINISTRATIVE SUPPORT FOR THIS TASK WILL BE PROVIDED UNDER THE BASIC CONTRACT.				
	4. TOOLS, DOLLIES, AND OTHER ITEMS PURCHASED BY J & A FOR THIS PROJECT WILL BE TURNED INTO GOVERNMENT IN AN USEABLE CONDITION UPON PROJECT COMPLETION.				
	5. THIS PROJECT IS TO BE COMPLETED BY 2 NOV 87.				
	6. THE GOVERNMENT WILL BE RESPONSIBLE TO REMOVE ALL ITEMS FROM THE WARDROBE UNITS TO BE REMOVED FROM BLDG 306. BLDG 306 WILL BE AVAILABLE TO J & A'S WORK FORCE BETWEEN THE HOURS OF 0700 AN 1800 HOURS MONDAY THROUGH FRIDAY, EXCEPT ON HOLIDAYS. ANY CHANGE TO THE LABOR COST IN THE CONTRACT'S WAGE DETERMINATION WILL CHANGE AND RESULT IN AN ADJUSTMENT TO THE TOTAL COST.				
	b. AS A RESULT OF THE ABOVE, ADD LINE ITEM 0001E, WARDROBE PROJECT, 1 JB, UNIT PRICE $150,378.00. THE TOTAL PRICE FOR THE BASIC YEAR WILL CHANGE FROM $192.520.00 TO $342,898.00				
	c. ALL OTHER TERMS AND CONDITIONS REMAIN IN FULL FORCE AND EFFECT.				

☆U.S. GOVERNMENT PRINTING OFFICE 1981 – 334-247

Attachment 3

National Federation of Federal Employees
421 E. Wabash Ave., Rantoul, Illinois 61866

Local 493
Chanute A.F.B.
Illinois

Comptroller General of the
United States
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Sir or Madam;

This is a request on behalf of the members of Local 493, National Federation of Federal Employees at Chanute A.F.B. that your office review the circumstances surrounding the November 1987 conditional award of Solicitation No. F41689-87-R-0287, to Perform the Trainer and Equipment Maintenance function here at Chanute under O.P.M. Circular A-76. The decision to Contract out this function by Mrs. Rita G. Samson, Contracting Officer, (512)-652-3551, has the appearance of an unfair advantage to the Raytheon Suporrt Services Company.

We feel that the prima facia evidence indicates a Chief Master Sergeant Harley Tolley, U.S.A.F. Retired, who was at the time of his retirement the Chief of Operations for the Agency at the function being contracted, did in the first week of July 1987, solicit current employees and members of the squadron to fill out employment applications for Raytheon. And that under the constraints imposed by the Federal Aquisition Regulation Section 14.211 and Air Force Regulation 30-30 and the revolving door law passed by congress, that these activities which CMST. Tolley performed as a Raytheon employee gave the Raytheon Corp. an unfair advantage.

Further, we feel that a conflict of interest exists between the participants and that in light of the fact that Raytheon was cited by the Pentagon for overcharging the Government that there may be grounds for setting aside their bid proposal. We therefore ask that your office suspend the unconditional award of this solicitation until a full investigation and final decision is reached by your office. If you have any questions please call me at (217) 495-4171.

Respectfully Yours,
R. Yaggie
Ron Yaggie
Chairman,
Subcommittee on Human Resources

ATTCH:
1. Statement of Intent
2. Statements of Witnesses (5)
3. Application (Raytheon)

STATEMENT BY SEN. DAVID L. BOREN

I APPRECIATE THE OPPORTUNITY TO APPEAR HERE TODAY TO SHARE SOME OF MY CONCERNS ABOUT THE REGULATIONS IN CIRCULAR NO. A-76 WHICH GOVERNS CONTRACTING OUT OF GOVERNMENT SERVICES. AS THIS COMMITTEE KNOWS, CONTRACTING OUT OF GOVERNMENT SERVICES, WHEN LESS COSTLY, HAS BEEN A POLICY OF THE UNITED STATES GOVERNMENT FOR THIRTY YEARS. I KNOW OF MANY EXAMPLES WHERE CONTRACTING OUT IS SAVING THE GOVERNMENT MONEY BUT AM HERE TODAY BECAUSE OF CERTAIN INEQUITIES TO THE FEDERAL EMPLOYEES IN THE CONTRACTING PROCESS WHICH BRINGS INTO QUESTION WHETHER THERE ARE ACTUAL SAVINGS IN CERTAIN CIRCUMSTANCES.

I ENDORSE AND HAVE COSPONSORED S. 909, THE LEGISLATION TO REQUIRE ANY SAVINGS FROM CONTRACTING OUT BE RETURNED TO THE TREASURY, INTRODUCED BY MR. REID, MR. SARBANES, AND THE CHAIRMAN OF THIS SUBCOMMITTEE, MR. PRYOR. I WOULD CAUTION THAT THE LEGISLATION SPELL OUT EXACTLY HOW TO ASSESS THESE SAVINGS. THERE IS QUITE A DIFFERENCE BETWEEN THE COST COMPARISONS ON WHICH BIDS ARE BASED AND ACTUAL COSTS TO THE GOVERNMENT. MY UNDERSTANDING IS THAT, PRESENTLY, IT IS DIFFICULT TO OBTAIN A COMPREHENSIVE ACCOUNTING OF A PARTICULAR CONTRACT WHICH WOULD INCLUDE NOT ONLY THE PAYMENTS TO THE CONTRACTOR BUT OTHER EXPENSES SUCH AS EARLY RETIREMENT, RETAINED PAY OR OTHER COST IMPACTS ON THE INSTALLATION. I HAVE BEEN TOLD THAT THERE IS A "DECISION

SUMMARY" FOR EACH CONTRACT, OUTLINING THE INCREASED COSTS FOR THE INSTALLATION, WHICH MIGHT AID THIS COMMITTEE IN CONSIDERATION OF THIS BILL. PERHAPS ENACTMENT OF S. 909 WOULD BRING ABOUT A MORE ACCURATE OVERALL STATEMENT OF COSTS BECAUSE THE DEPARTMENT OR AGENCY WOULD HAVE EVERY INCENTIVE TO ACCOUNT FOR ALL DETAILS TO PREVENT THE RETURN OF FUNDS TO THE TREASURY.

THE COMMITTEE HAS ALSO ASKED THAT I COMMENT ON THE DRAFT PROPOSAL TO ALLOW FEDERAL EMPLOYEES, AS A UNIT, TO APPEAL TO THE GENERAL ACCOUNTING OFFICE. IT SEEMS TO BE EQUITABLE TO EXTEND THE SAME OPPORTUNITY TO THE FEDERAL EMPLOYEES THAT THE PRIVATE CONTRACTORS ENJOY. AT THIS JUNCTURE, THE FEDERAL EMPLOYEES CAN APPEAL ONLY THE LINE ITEMS ON THEIR CONTRACT. FOR INSTANCE, MANY OF THE INEQUITIES SUCH AS OUTDATED WAGE SCHEDULES, WHICH I WILL ADDRESS LATER, ARE PRESENTLY NOT CONSIDERED BY THE PRESENT APPEALS PROCESS.

SEVERAL MONTHS AGO, A NEW CONTRACT INVOLVING THE DIRECTORATE OF LOGISTICS AT FORT SILL WAS ANNOUNCED AND I WAS ASKED BY THE FEDERAL EMPLOYEES TO LOOK INTO POSSIBLE INEQUITIES IN THE COST COMPARISON PROCESS. THE FOLLOWING IS A SUMMARY OF THE FINDINGS FROM THE SEVERAL MEETINGS THE OKLAHOMA DELEGATION HAS HELD WITH OFFICIALS FROM THE DEPARTMENT OF THE ARMY, THE OFFICE OF THE SECRETARY OF DEFENSE AND THE OFFICE OF MANAGEMENT AND BUDGET.

FOR MORE THAN SEVEN YEARS, THE DOL FEDERAL EMPLOYEES AT FORT SILL HAVE BEEN UNDER THE STRAIN OF A CONTRACTING OUT STUDY SINCE THE ANNOUNCEMENT IN NOVEMBER, 1980. IN ADDITION, MORE THAN THREE YEARS OF DELAY OCCURRED UNTIL THE CONTRACT AWARD WAS ANNOUNCED IN JUNE, 1987:

-- NEARLY A YEAR FOR A SMALL BUSINESS ADMINISTRATION PROTEST ON THE SIZE OF SOLICITATION.

-- ANOTHER ELEVEN MONTHS WHILE THE ARMY WORKED AN ISSUE OF PROPERTY ACCOUNTABILITY.

-- A SEVEN MONTH DELAY TOOK PLACE FOR THE ARMY WORK STATEMENT DESCRIPTION.

-- LASTLY, IT TOOK SEVEN MONTHS FOR REGULATIONS TO BE PROMULGATED AS A RESULT OF THE FERS ACT.

LET ME, AT THIS TIME, OUTLINE A FEW OF THE DISCREPANCIES IN THE COST COMPARISON PROCESS AS IT PERTAINED TO THE DOL CONTRACT:

1. WHEN AN AWARD FEE CONTRACT IS USED, THE COSTS OF THE AWARD FEE ARE NOT COUNTED AGAINST THE CONTRACTOR BECAUSE HE MUST MEET CERTAIN STANDARDS TO RECEIVE THE ACTUAL MONEY. THE GAO FOUND THAT THIS MAY HAVE UNDERSTATED THE COSTS BY AS MUCH AS $2.7 MILLION.

2. IN RESPONSE TO THE ENACTMENT OF THE NEW FEDERAL EMPLOYEES RETIREMENT SYSTEM WHICH PRECLUDED THE INCLUSION OF THE FEDERAL EMPLOYEES' SOCIAL SECURITY/THRIFT PLAN CONTRIBUTIONS FROM THE COST COMPARISON, OMB RULED THAT THE CONTRACTORS SHOULD NOT INCLUDE THOSE CONTRIBUTIONS. SINCE THE GOVERNMENT DOES NOT PAY SOCIAL SECURITY ON EMPLOYEES UNDER THE CIVIL SERVICE RETIREMENT SYSTEM, THIS IMPACTED, AGAIN ACCORDING TO THE GAO, AGAINST THE FEDERAL EMPLOYEES APPROXIMATELY $1.7 MILLION. I COMMEND YOU, MR. CHAIRMAN, FOR INTRODUCING S. 2188 WHICH IS SIMILAR TO S. 2194 INTRODUCED BY MR. NICKLES, MR. FORD, MR. WIRTH AND MR. ARMSTRONG AND MYSELF. THIS AMENDMENT TO SECTION 307 OF THE FERS ACT WILL CORRECT THE RECOGNIZED INEQUITY AND, SINCE OMB HAS REQUESTED THIS REMEDY, I WOULD URGE SPEEDY ACTION BY THE COMMITTEE AND THE SENATE.

3. THE SERVICE CONTRACT ACT REQUIRES THE PAYMENT OF PREVAILING WAGES IN THE LOCALITY WHERE THE WORK BY CONTRACT IS PERFORMED. IN THE COST COMPARISON, THE DOL FEDERAL EMPLOYEES HAD TO INFLATE PERSONNEL COSTS 3 PERCENT OVER THE 1986 FEDERAL WAGE SYSTEM AND GENERAL SCHEDULES FOR 1987 AND AN ADDITIONAL 2 PERCENT FOR THE FIRST CONTRACT YEAR. THE CONTRACTOR, IN THE COST COMPARISON, USED THE AVAILABLE 1986 WAGE SCALE REFLECTING 1985 WAGES, WHICH IS ESTIMATED TO HAVE AGAIN COST THE FEDERAL EMPLOYEES $1.9 MILLION (BASED ON THE PRESENT WAGE SCALE). THE CONTRACTOR WILL PAY THE INCREASED WAGES AND RENEGOTIATE WITH THE GOVERNMENT AT THE END OF THE

FIRST CONTRACT YEAR. I WOULD IMAGINE THE FULL INCREASE IN SALARIES WILL BE PAID AND WILL BE AN ACTUAL COST TO THE TAXPAYERS. I BELIEVE THE LABOR WAGE SCALE USED IN THE BIDS IS ALWAYS OUTDATED DUE TO THE LENGTH OF TIME TAKEN TO MAKE THE DECISION ON THE CONTRACT.

4. THE FEDERAL EMPLOYEES MUST USE WHAT IS TERMED A STANDARD RETIREMENT COST FACTOR. OMB SAYS THIS REPRESENTS THE "GOVERNMENT'S SHARE OF THE FULL DYNAMIC NORMAL COSTS OF THE CIVIL SERVICE RETIREMENT SYSTEM AND THE FEDERAL EMPLOYEES RETIREMENT SYSTEM" DEVELOPED BY THE OFFICE OF PERSONNEL MANAGEMENT. IN THE CASE OF THE DOL CONTRACT, THE FIGURE WAS 21 PERCENT OF THE FULL TIME EMPLOYEES' SALARIES; IT HAS BEEN REVISED TO 19.1 PERCENT AS OF MARCH 4. THE TOTAL PERSONNEL COSTS FOR FEDERAL EMPLOYEES, INCLUDING WORKMEN'S COMPENSATION, HEALTH AND LIFE INSURANCE, AWARDS, BONUSES AND MEDICARE, IS NOW 27.05% COMPARED TO 29.65% IN THE DOL CONTRACT.

5. THE COSTS OF CONTRACT ADMINISTRATION ARE COUNTED AGAINST THE CONTRACTOR IN THE COST COMPARISON. FORT SILL REQUESTED 32 FEDERAL EMPLOYEES TO OVERSEE THE CONTRACT WHICH WAS DECREASED TO 16 BY HEADQUARTERS. YET, A LETTER, DATED NOVEMBER 9, 1987, GRANTED 7 ADDITIONAL EMPLOYEES FOR TWO YEARS BUT STATED THAT IT COULD NOT BE CHARGED TO THE CONTRACTOR BECAUSE "HDQA HAS ESTABLISHED YOUR BASELINE AT 16 AND WILL NOT ENTERTAIN" AN INCREASE. THIS COST WILL BE PART

OF THE INCREASE TO THE INSTALLATION FOR CONTRACTING OUT.

6. WHEN A CONVERSION TO THE PRIVATE SECTOR OCCURS, THE FEDERAL EMPLOYEES WHO LEAVE GOVERNMENT SERVICE, RECEIVE ONLY THE CONTRIBUTIONS THEY PERSONALLY MADE TO THE RETIREMENT SYSTEM. SOMEONE WHO HAS TENURE OF MANY YEARS IS ENTITLED TO NO INTEREST ON THESE FUNDS. THIS IS EXTREMELY UNFAIR AND I BELIEVE CONGRESS SHOULD ENACT LEGISLATION TO ADDRESS THIS ISSUE.

7. THE CONTRACTOR'S BID MUST BE 10 PERCENT LESS THAN THAT OF THE FEDERAL EMPLOYEES. THIS IS CONJECTURED TO COVER THE CONVERSION COSTS TO THE TAXPAYERS OF, FOR EXAMPLE, EARLY RETIREMENT, RETAINED PAY (OCCURS, FOR EXAMPLE, WHEN GRADE 12'S BUMP AND SERVE IN LOWER GRADES BUT RETAIN THE HIGHER SALARY), ADDITIONAL INVENTORIES, NECESSARY OVERTIME, AND NEW SECURITY CLEARANCES. AN INTERESTING POINT IS THAT THESE COSTS, AND THE 10 PERCENT DIFFERENTIAL, WERE INCLUDED IN THE COST COMPARISON PROCEDURES UNTIL 1983.

BY THE WAY, HAD THE MORE ACCURATE NEW RETIREMENT COST FACTOR BEEN INCLUDED IN THE DIRECTORATE OF LOGISTICS BID AT FT. SILL, IT WOULD HAVE SUBTRACTED $1.2 MILLION FROM THE DOL EMPLOYEES' BID. THE NEW DEPARTMENT OF LABOR WAGE SCALE WOULD HAVE ADDED $1.9 MILLION TO THE CONTRACTOR'S BID. THE INCLUSION OF SOCIAL SECURITY AND THRIFT PLAN COSTS WOULD HAVE BENEFITTED THE DOL EMPLOYEES BY $1.7 MILLION. WITHOUT THE

$2.7 MILLION AWARD FEE OR ADDITIONAL INSTALLATION COSTS, THIS STILL TOTALS $4.8 MILLION IN FAVOR OF THE FEDERAL EMPLOYEES. AFTER THE APPEALS PROCESS, THE CONTRACTOR WON BY $2.7 MILLION OVER FIVE YEARS IN THE COST COMPARISON ANALYSIS.

TO CONCLUDE, I DO BELIEVE THAT THE DEPARTMENT OF THE ARMY FOLLOWED THE RULES AND REGULATIONS AND BY MY TESTIMONY DO NOT INTEND CRITICISM OF THE ARMY OR THE CONTRACTOR. I DO, HOWEVER, HAVE SINCERE DOUBTS THAT, AT THE END OF THIS CONTRACT WITH AN ACCURATE ACCOUNTING OF THE TOTAL COSTS, THERE WILL BE ANY SAVINGS FOR THE AMERICAN TAXPAYERS.

ONE LAST POINT I WOULD LIKE TO MAKE IS THAT CONGRESS CONTROLS THE NUMBERS IN CIVILIAN END STRENGTH BUT NOT CONTRACT PERSONNEL. CONGRESS DEMONSTRATED CONCERN ABOUT THIS QUESTION BY REQUIRING, IN THE FY 1987 DEFENSE AUTHORIZATION BILL, A DOD REPORT WHICH STATED THAT FROM 1979 TO 1989, DOD CONTRACT WORKYEARS HAVE GROWN BY 151 PERCENT WHILE CIVILIAN END STRENGTH HAS ALSO SHOWN AN INCREASE OF 13.6 PERCENT. IN OTHER WORDS, DOD CONTRACT WORKYEARS HAVE GROWN FROM 237,000 TO 596,000 DURING THIS PERIOD AND, YET, CIVILIAN END STRENGTH HAS CLIMBED FROM 990,000 TO 1,125,000.

I AM CONVINCED THAT THE PRESENT COST COMPARISON PROCESS DOES NOT ACCURATELY PORTRAY REAL DOLLAR EXPENDITURES. I AM PRESENTLY PAYING CLOSE ATTENTION TO ANOTHER CONTRACTING PROCESS UNDER THE SAME REGULATIONS AT FORT SILL WHICH AFFECTS

ABOUT 500 MORE EMPLOYEES AND THEIR FAMILIES. I WOULD HOPE THAT THIS SUBCOMMITTEE WOULD REVIEW THESE ISSUES AND REPORT APPROPRIATE MEASURES TO THE SENATE TO INSURE THAT CONTRACTING OUT ACTIVITIES DO, IN REAL TERMS, SAVE THE AMERICAN TAXPAYERS MONEY.

TESTIMONY OF HON. IKE SKELTON

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE

OF THE

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

MARCH 30, 1988

Mr. Chairman, I would like to thank you for giving me the opportunity to testify on the important issue of the contracting out of government functions. The Reagan administration's contracting out policy is just one part of its often reckless push to privatize the federal government. Though the issue has received considerable Congressional scrutiny in the past, I believe these trouble-filled programs require even more examination. I would like to state my strong support for the work of this subcommittee in looking into the issue.

Mr. Chairman, I have learned all about the so-called "commercial activites" program through the trials and tribulations of Fort Leonard Wood, an Army post which is located in my district. Numerous flaws in the Administration's contracting out policy have come to light in the years since contracting out studies began at Fort Leonard Wood, and I would like to tell the committee about the most important ones: the program does not always save money as it is supposed to, and it is unfair to the workers.

No one can disagree with the supposed rationale of the contracting out program--to save money for the federal taxpayer. But the way it is implemented, it often does not work that way. Studies sometimes take so long to complete that by the time they are done, their results are obsolete. Of the two biggest studies at Fort Leonard Wood, one took seven years and the other four years to complete. Another problem is that the studies, at Fort Leonard Wood and elsewhere, often fail to take into account all the work that is done by current employees. And the way the cost comparison is done is biased in favor of the contractors, by leaving out some of their costs for retirement benefits and calculating their wage scales using outdated statistics. The GAO has documented most of these problems on numerous military posts.

With all of these inaccuracies, the result is often studies which mistakenly conclude that contracting out will save money. So a contract is signed. Then the truth comes out about work that was left out or requirements that have changed since the study was done, or about adjusted, higher labor costs, so the contract has to be renegotiated. When the federal contribution to the employee retirement programs--which was left out of the cost study--is added in, the result is often that the government loses money instead of saving it. At Fort Belvoir, the leader among contracting fiascos, the contract was supposed to be for about $5.5 million; it actually cost $12.6 million in its first year and over $16 million the next year.

If the employees try to point out these flaws, as those at Fort Leonard Wood did, they find that the appeals process is biased against them even more than is the study process. First, they are routinely given only 15 days to challenge the cost comparison which took years to develop. I managed to help get some of them an extension, but the next obstacle they hit could not be overcome: most of the problems they found are not considered legitimate grounds for an appeal. The officer in charge of one of the functions contracted out protested that there were some serious problems with the contractor's bid--numbers that just didn't make sense. I have here some memos, which I would like to submit for the record, in which that officer details these obvious errors. The appeal board ruled that the employees could not appeal on these grounds.

The employees also documented how their work load was underestimated, and how some costs were left out. The appeal board, under political pressure from the administration, ruled that these were also invalid--though the GAC has concluded from other cases that such issues need to be considered.

Of course, if the contractor wants to appeal, he can base his appeal on much broader grounds and have the GAO look into the matter. One of the contracts just let at Fort Leonard Wood was originally awarded to the in-house bid--in other words, to the current employees--but was awarded to the contractor on appeal.

But this process is not only biased; it is also almost completely insensitive to the workers. The workers are kept in limbo, uninformed and wondering, for years while studies are done and bids considered. In that one case they thought they had saved their jobs, only to have their hopes cruelly destroyed by the contractor's appeal. The appeal process seems designed to make their appeal fail. And the flaws in the competition process make them come away convinced that the result might not even save the money it is supposed to. They feel that their views and concerns have not been taken into account. Many feel that they have lost their jobs unfairly. Often, they are right.

A final problem is that the whole process can be very destructive to the quality of work. Being insensitive to workers means that their morale drops, and work quality just has to suffer. Meanwhile, the decision to contract out completely ignores the quality of the work of civilian employees. It surely should be worth something that the Fort Leonard Wood employees who are about to be laid off won an award last year for the excellence of their work. But the "commercial activities" program just does not take that into account. It also does not consider that some contractors have been found by the GAO to perform very poor quality work.

It is obvious from all of this that the administration just does not care about the federal workers affected by their drive to privatize the federal government. And so those workers are

unfairly suffering from the bad implementation of a policy pushed to its extremes.

Meanwhile the administration is ignoring the clearly stated intent of recent laws. Last year's Nichols Amendment to the Defense Authorization Act directed the military departments to delegate to base commanders the authority to decide which functions should be studied and which ones need not. The problem being addressed, as my distinguished colleague Bill Nichols clearly stated, was that, in his words, "all too often, higher headquarters have dictated the pace and scope of cost comparisons to meet some arbitrary Pentagon deadlines."

So what was the Administration's response? President Reagan released an executive order on November 19, 1987, directing that the contracting out program be speeded up. And in keeping with the executive order, quotas were established: the Army will have to review 8450 jobs for possible contracting, the Navy 8650, the Air Force 6550, and the Defense Logistics Agency 1350. The Army's quota is almost three times the number of jobs it has reviewed in each of the last few years. It is obvious that the Administration is flouting the intent of the law, pushing commanders to do studies they might otherwise prefer not to do.

This is why I believe new legislation is necessary. The bill before this committee, H.R. 808, can make a valuable contribution. Section 3, in particular, which provides for including the employees in the entire process, will go a long way toward

answering the employees' grievance about be kept uninformed. If it is implemented well, it might also work to improve the studies done by helping to ensure that all of the relevant work is included in the studies. These are very positive steps.

I was also asked to comment on a related bill, S-2180, recently introduced by Senator Pryor. This bill will get to the heart of one of the inequities in the cost comparison process by making sure that government contributions to contractor-run thrift plans are included in the contractor's cost estimates. I believe a bill which has this effect is absolutely necessary. We cannot continue with a cost comparison process that is biased against our federal workers--and often against the United States Treasury, as the GAO and OME agree is the case without such legislation.

Finally, I have been told that this subcommittee is considering legislation which will improve the appeals process so that it is more equitable to the workers. I strongly support efforts in this direction. We must give the workers a fair opportunity to state their case and have all relevant factors considered. Anything less not only perpetuates an inefficient process that often costs the United States money; it represents an indefensible imposition on the rights of the workers.

I would like to thank you again for giving me the opportunity to appear before you. I will now be happy to answer any questions you might have.

STATEMENT OF ROBERT P. BEDELL
ADMINISTRATOR
OFFICE OF FEDERAL PROCUREMENT POLICY
ON S. 909
COMMERCIAL ACTIVITIES CONTRACTING ACT OF 1987
BEFORE THE
SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE
AND CIVIL SERVICE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
MARCH 30, 1988

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear today to comment on S. 909 and the A-76 cost comparison process. You also asked for our comments on (1) a draft bill to require the General Accounting Office to review and decide a new category of protests filed by a new class of protesters -- Federal Government employees challenging agency decisions concerning A-76 matters -- and (2) S. 2188, a bill that you introduced that would amend section 307 of the Federal Employees Retirement System Act of 1986.

COMMENTS ON S. 909

S. 909 would require that dollars saved because executive agencies converted Government employee-performed commercial activities to private contractor performed activities (presumably under OMB Circular No. A-76) must be paid into the General Fund of the Treasury by the head of the executive agency within 60 days after the beginning of the next fiscal year.

Reductions in personnel resulting from these conversions to contract would reduce the authorized number of employees in that agency. For civilian employees the amount to be reduced would be determined by the Director of the Office of Management and Budget; for "uniformed" personnel, the number would be set by the Secretary concerned.

S. 909 would also require that each agency official responsible for determining under OMB Circular No. A-76 whether to convert any Government-performed commercial activity to a contract with private business must meet

monthly during the study with either the employees or with their representatives.

Government employees who are performing commercial services that are available from non-governmental sources are -- and should be -- active participants in defining the work requirements that define that task and in identifying ways to improve the productivity of such commercial activities. Periodic (but not necessarily monthly as in S. 909) consultations are a good idea and we will consider including it in any upcoming revision of OMB Circular A-76. We do not believe, however, that it is necessary to enact legislation to obtain -- or actually to continue -- effective consultation.

We also agree with the intent of S. 909 that the dollar and personnel savings generated through A-76 should be used to reduce the costs of Government.

We also do not believe that the method prescribed in S. 909 for identifying and returning the described savings to

the Treasury conflicts with Executive Order No. 12615.

In Executive Order No. 12615 entitled "Performance of Commercial Activities" (issued on November 19, 1987) the President has recently required that estimated savings from agency planned A-76 studies for fiscal year 1988 (arising from both conversions to contract and more efficient Government operations) should be deducted from the following year's budget. This requirement in the Executive Order, we believe, is preferable to the after-the-fact process in S. 909 because under Executive Order No. 12615 we can use incentives, e.g. sharing future savings with agencies, and penalties, e.g. deducting funds from next year's budget in anticipation of study completions, to stimulate agency participation in reviewing their commercial activities for more cost effective performance.

In my view, the major difficulty with this "make-or-buy" program has been that the Federal agencies have not initiated or completed the A-76 studies in a timely manner. This

frustrates the program, and is unfair to employees, employers, contractors and taxpayers.

There have been no "penalties" to agencies for their failure to meet study goals and there are few rewards for succeeding to meet them. These delays, coupled with the natural opposition of any work force when faced with change, have led to an A-76 process that can drag on for an unacceptably long period of time.

When we reduce budget requests for fiscal year #2 by the amount of the predicable savings from the studies to be performed in fiscal year #1, our experience is that more studies get done. If we also allow agencies to make a "profit" if they meet these study goals, even more studies are performed.

We believe that employees, agencies and taxpayers must share the savings. Our objection to S. 909 is that it removes an incentive -- the possibility of sharing in savings in future years -- for doing the studies. Failure to

complete the A-76 studies is the primary problem.

In other words, if an agency does not conduct a study, nothing is turned in to the Treasury. S. 909 removes a reason why an agency would conduct a study, and therefore, may reduce what would be turned in to the Treasury. This is why we do not support S. 909.

THE REQUIREMENTS OF EXECUTIVE ORDER NO. 12615

Since 1981, about 72,000 full time equivalent positions (FTEs) have been reviewed by agencies under A-76 procedures. Annual savings as a result amount to $696 million; over $9,600 per position studied. For purposes of deducting funds from agency budget requests in anticipation of their completion of studies they have committed to conduct, we deduct $4,875 per position.

This lower budgeting rate assures the agencies that they can keep a sizable portion of the savings even if they do not achieve the average savings.

As authorized by the Executive Order, we reduced the $4,875 deduction by 25 percent -- to $3,656 -- for the next budget year to further encourage the agencies and to enable them to reward their employees covered by the studies for their productivity efforts. We will closely monitor the results of this sharing to assure that the employees are rewarded by the agencies and that these funds are not used for other purposes.

This prospective sharing of savings is the primary agency incentive. If the agency does not meet its study goals, we will not restore the budget reduction. However, if the agency meets its study goals, but does not achieve the projected savings, OMB will seek to restore the difference between the budgeted savings and the actual savings.

S. 909 may cause agencies to delay or cancel A-76 studies so as not to lose future resources. Deducting some of the A-76 savings during the budget development process provides a visible goal for the agencies to meet -- and

allows the Congress to review -- the potential benefits.

The FY 89 budget contains savings and cost reductions, pursuant to these directions in the Executive Order, of $238 million and 23,302 FTEs.

Congressional support for the cost reduction potential of the A-76 program would be sincerely welcomed. We could support this type of provision if it meant that more A-76 studies would be done. Instead, it would mean that fewer would be done.

SUGGESTION FOR IMPROVING THE A-76 APPEALS PROCESS

You also asked for our comments on a draft -- but not yet introduced -- bill that would allow federal employees or their representatives to appeal to the General Accounting Office an agency decision concerning its contracting with a non-Government entity for the performance of a commercially available service instead of using -- if that is the case-- more costly Government employees. Apparently, under this

draft, employees would be authorized to appeal, for the first time, certain basic management decisions on how to run the agency. These kinds of decisions have heretofore not been subject to review outside the executive branch. The items that could be appealed include: the accuracy of the definition of the work to be performed (the Performance Work Statement), the use of technology and the amount and kind of supplies included in the Government's in-house estimate.

We cannot agree to a proposal that would purport to provide an agency of the legislative branch with authority to overrule executive branch decisions in this manner. We do not believe the proposal should be pursued for several other reasons as well.

Current procedures offer Federal employees protection from misuse of the A-76 process. The A-76 process requires an independent review of the activity's compliance with the A-76 rules before the Government finishes the in-house estimate. This independent review (normally carried

out by the agency audit staff) ensures that the cost comparisons are current, reasonable, accurate, and complete. The review includes whether the in-house cost estimate is based on the same performance work statement to be used in the solicitation.

After the initial cost comparison is made the Circular provides for an administrative appeals process within the Agency. If this review supports the original determination to award a contract, Federal employees or their representative may obtain further review by invoking the negotiated grievance procedure established in their collective bargaining agreement with the agency (5 U.S.C. 7121). If the parties cannot satisfactorily settle the grievance, then either party may submit the matter to binding arbitration.

There are other, less formal avenues of appeal that are available to employees to make their concerns known to those charged by law with managing the agency, including appealing

to their congressional representatives.

Employees will not always agree with the decisions by agency officials, but these officials are responsible by law for making these decisions. The task of running departments and agencies today is difficult enough without subjecting more of its day-to-day decisions to further appeal, review and litigation.

AMENDMENT TO THE FEDERAL EMPLOYEES RETIREMENT SYSTEM ACT

Mr. Chairman we support S. 2188 to amend Section 307 of the Federal Employees Retirement System Act of 1986, which currently prevents the consideration of the full cost of retirement systems when doing cost comparisons under A-76. S. 2188 will also ensure consistency in the comparison of retirement costs between the Government and the private sector.

As you know, in June of 1987, the Director of OMB asked Congress to amend Section 307 in this fashion. We support the passage of S. 2188.

I will be happy to answer any questions.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

JUL 7 1988

Honorable David Pryor
Chairman
Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

During your Subcommittee's March 30, 1988 hearings on S. 909, Commercial Activities Contracting Act of 1987, and the Office of Management and Budget Circular No. A-76 cost comparison process, several questions were generated for which we are pleased to provide answers.

Senator Stevens raised two concerns during the hearing which we agreed to look into: (1) the rate of fringe benefits paid by the private sector versus the Government, and (2) the possible need for a team of professional personnel people to brief federal employees on their employment rights after an A-76 study.

In addition to Senator Stevens' questions, we received 10 additional written questions from your office. Our answers to all 12 questions are in enclosure one. During the hearing we agreed to provide the FY 1988 cost comparison study goals for each agency and the associated FY 1989 budgetary savings required by Executive Order 12615, "Performance of Commercial Activities." These listings are at enclosure two.

Thank you for your interest in the A-76 program and the savings that can be achieved through the use of competition to achieve the most cost effective provision of commercial activities. If we may be of further assistance, please let me know.

Sincerely,

Allan V. Burman

Allan V. Burman
Deputy Administrator and
Acting Administrator

Enclosures

QUESTIONS AND ANSWERS FROM S.909 TESTIMONY

WRITTEN QUESTIONS

QUESTION 1. You claim that agencies will not perform contracting out studies if S.909 is passed. But the November Executive Order mandates that studies be performed. Are you saying that agencies would deliberately disobey the Executive Order if S.909 is enacted?

ANSWER. No. The Executive Order provides the goals, incentives and penalties that have been needed to properly manage the program. However, the program has proven difficult to manage in the past. We believe the incentives offered in the Executive Order and the ability to use the budget to encourage compliance are essential to the success of the program.

NOTE: No question 2 was submitted.

QUESTION 3a. How much has been "saved" annually by contracting out since 1981?

ANSWER. The annual savings/cost reductions of dollars and full time equivalent positions (FTEs), by agency, for each year from 1981 through 1987 are shown on tab one. They equate to an annual savings of $695.8 million and 45,737 FTE in 1987.

QUESTION 3b. How much of that amount was used to reduce the deficit and how much was retained for use by the agencies?

ANSWER. Tab two shows the amounts the agencies budgets have been reduced, through 1988, due to the A-76 program. The annual savings amounts are $126.6 million and 13,987 FTEs. For the Defense Department, for example, savings are significant, but are not included on the table, since Defense has used savings from A-76 studies to meet other needs. If the savings had not occurred, budget requests would have been higher and fewer cost comparisons would have been done.

QUESTION 3c. Can OFPP or the individual agencies provide the subcommittee with an accounting for those funds kept by the agencies?

ANSWER. No. No agency management information system has been set up to track how these savings have been used.

QUESTION 4. Do these savings include the costs of early retirement and retained pay often engendered by contracting out federal jobs? Are these costs outlined in the decision summaries which accompany the contracts?

ANSWER. Yes, to both.

The costs of early retirements are included in the retirement rates, provided by the Office of Personnel Management (OPM), used for the federal workers in the cost comparison. OPM has informed us that the overall number of early retirements has not been significantly affected by A-76. The vast majority of personnel savings incurred by the civilian agencies' during this Administration have come from management improvement reductions other than A-76. In fact, civilian employment has increased during this Administration and most employees affected by an A-76 decision have found other federal jobs.

The costs of retained pay are covered by the 10 percent of Government personnel costs differential added to the contractor's costs on the cost comparison form.

These two costs are not separately identifiable on the cost comparison forms as they are part of factors that also cover other costs.

QUESTION 5. Has OMB laid out any guidance for the use of these savings?

ANSWER. No.

QUESTION 6. You estimate that the Government will save $238 million on contracting out in FY 89. How much will be spent in the performance of the necessary cost comparisons?

ANSWER. We do not have figures on how many employees will be involved in performing A-76 cost comparison studies.

QUESTION 7. If we assume that some "incentive" is necessary for agencies to operate efficiently, what percentage of the "savings' would be required?

ANSWER. In the FY 1989 budget, we set aside 25 percent of the first year savings to be used as incentives to reward employees covered by the studies for their productivity efforts, or for use in other productivity enhancement projects. First year dollar savings are calculated at $3,656 per FTE to be studied and subsequent years savings are calculated at $4,875 per FTE scheduled for study.

QUESTION 8. The Nichols amendment contained in the FY 88 DOD Authorization Bill gave base commanders increased authority over cost studies at their installations. What guidance or regulations have you issued to implement that amendment?

ANSWER. This Office has not issued guidance or regulations on the Nichols amendment. The amendment was aimed at the Department of Defense and the Secretary of Defense issued guidance to Defense components on February 29, 1988. (See tab 3).

QUESTION 9. S.909 contains a requirement for meetings with employees in the belief that employees are an invaluable resource in performing a cost study. You say that you may consider including such a requirement in an A-76 revision. What problems would legislating such meetings create?

ANSWER. Management soliciting the advise of employees in the operation of any organization is "good" management practice. Full utilization, by management, of the employees' knowledge and experience is a major theme of this Administration's productivity improvement programs. The A-76 circular states that management should solicit the views of employees. The revised circular will contain more specific instructions on employee participation. We do not oppose adding this requirement to legislation but, do not think it is necessary.

QUESTION 10. You oppose the proposal to define federal employees as interested parties under the Competition in Contracting Act of 1984 because it would give GAO the "authority to overrule executive branch decisions."

Do you oppose the current use of the GAO appeals route by private contractors for A-76 protests? Are such protests "an overruling of Executive Branch management decisions?"

According to GAO, the average contractor appeal is resolved in 32 days. How long does the average federal employee grievance procedure and arbitration take?

ANSWER. The Administration opposes any rule that would give the legislative branch authority to overrule executive branch management decisions. We oppose the current stay provisions in the Competition in Contracting Act and the current judicial interpretation of the Act that the GAO may require the executive branch to pay contractor bid/proposal costs and attorney fees if GAO finds in opposition to the executive branch decision. However, the Executive Branch is carrying out the protest provisions of CICA while a relevant case (the U.S. Army Corps of Engineers vs Ameron, Inc.) is being considered by the Supreme Court.

We do not have specific information on the average length of a grievance procedure. The length of time permitted for a grievance is established by negotiation in each collective bargaining agreement. The Federal Labor Relations Authority informed us that a typical arbitration proceeding takes an average of two to three months.

QUESTION 11. You cite Congress as one informal avenue of appeal for federal employees or unions in contracting out cases. Unfortunately, no matter how much they might want to. Senators and Representatives are rarely successful in overturning a contract decision.

Are you saying that either Senator Boren or Congressman Skelton could have stopped the contracting out at their respective bases?

ANSWER. We did not mean to imply that Members of Congress serve as a formal appeal mechanism for A-76 studies. Rather, inquiries from Members of Congress about the conduct and results of A-76 studies generate high level reviews of the original decisions being contested. Many times, as in the case of Senator Boren's concerns about the Fort Sill Directorate of Logistics study, the GAO and the highest management officials in the agency and OMB become directly involved in reviewing lower level decisions and reporting their findings to the legislator. If Senator Boren's or Congressman Skelton's requests for review had resulted in a finding by top management that the original decisions were in error, those original decisions would have been reversed.

Enclosure 2

PERFORMANCE OF COMMERCIAL ACTIVITIES

FY 1989 BUDGET REDUCTIONS

Department/Agency	$M	FTEs
Agriculture	11.0	1244
AID	-0-	62
Commerce	3.0	436
Corps of Engineers	2.0	180
Defense	168.0	15000
Education	.5	57
Energy	2.0	204
EPA	1.0	156
GSA	9.0	1029
HHS	5.0	551
HUD	-0-	-0-
Interior	7.0	812
Justice	6.0	701
Labor	.2	19
NASA	2.0	284
OPM	.9	190
SBA	.5	54
State	1.0	122
Transportation	13.3	1521
Treasury	5.0	587
USIA	.1	14
Veterans Administration	.5	79
Total	238.0	23302

PERFORMANCE OF COMMERCIAL ACTIVITIES

1988 FTEs TO BE STUDIED

Department/Agency	FTEs
Agriculture	2,887
AID	144
Commerce	1,208
Corps of Engineers	550
Defense	25,000
Education	133
Energy	474
EPA	361
GSA	2,387
HHS	1,278
HUD	-0-
Interior	1,884
Justice	1,628
Labor	44
NASA	660
OPM	250
SBA	126
State	283
Transportation	3,249
Treasury	1,363
USIA	32
Veterans Administration	296
Total	44,237

Tab 1

Dollar Savings From A-76 Studies

($000)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87	FY 81-87 Actual
DOA	$ 138	$ 794	$ 0	$ 0	$ 816	$ 332	$ 154	$ 2,234
AID	0	0	0	0	0	60	0	60
DOC	162	0	1,679	996	1,033	1,683	2,822	8,375
CORPs	0	9	463	444	782	523	263	2,484
DOD	136,000	57,100	101,600	70,800	81,700	86,500	77,745	611,445
DOEd	0	0	0	0	0	0	0	0
DOE	1,957	878	735	202	116	228	104	4,220
EPA	0	0	0	0	0	0	0	0
FEMA	0	0	0	0	0	0	0	0
GSA	0	2,333	3,870	6,455	9,924	9,220	5,485	37,287
HHS	0	0	0	153	1,900	2,458	38	4,549
HUD	0	0	0	0	0	0	0	0
DOI	3,184	0	2,073	758	914	43	15	6,987
DOJ	0	0	0	0	0	0	0	0
DOL	0	0	0	0	0	0	0	0
NASA	0	0	0	0	0	0	0	0
OPM	0	0	0	0	0	0	0	0
SBA	0	0	0	0	0	0	0	0
State	0	0	0	0	0	0	0	0
DOT	0	106	1,597	545	2,954	5,214	2,355	12,769
Treasury	0	0	0	115	0	440	13	568
USIA	0	0	0	0	0	0	0	0
VA	0	0	0	0	0	0	4,773	4,773
Other	101	0	0	0	0	0	0	101
TOTALS	141,542	61,220	112,017	80,468	100,137	106,701	93,767	695,852

Cumulative	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
Savings	141,542	202,762	314,779	395,247	495,384	602,085	695,852

Tab 1

FTE SAVINGS FROM A-76 STUDIES

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87	FY 81-87 Actual
DOA	9	110	289	19	184	36	19	666
AID	0	0	0	0	0	12	0	12
Commerce	10	0	85	71	16	138	232	552
CORPs	0	7	63	17	43	50	13	193
DOD	5,133	2,452	7,808	5,206	4,672	5,506	6,287	37,064
DOEd	0	0	0	0	0	0	0	0
DOE	145	23	104	16	39	43	22	392
EPA	0	0	0	0	0	0	0	0
FEMA	0	0	0	768	118	0	0	886
GSA	0	0	456	174	823	409	289	2,151
HHS	0	0	9	38.5	56	124	4	232
HUD	0	0	0	43	13	0	0	56
DOI	73.5	0	104	232.5	147	2	1	560
DOJ	0	0	0	0	0	0	0	0
DOL	0	0	0	5	0	0	0	5
NASA	0	0	0	0	0	0	0	0
OPM	0	0	0	0	0	122	25	147
SBA	0	0	0	0	0	0	0	0
State	0	0	0	0	0	0	0	0
DOT	0	42	267	5	398	869	536	2,117
Treasury	0	0	429	81	0	30	2	542
USIA	0	0	0	0	0	0	0	0
VA	0	0	8	0	0	0	124	132
Other	14	0	0	2	15	0	0	31
TOTAL	5,385	2,634	9,622	6,678	6,524	7,341	7,554	45,737

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FTE Budget Goals for A-76

	FY 85			FY 86			FY 87			FY 88 Projected		
	Study FTEs Goal	Budget FTE	Budget $000	Study FTEs Goal	Budget FTE	Budget $000	Study FTEs Goal	Budget FTE	Budget $000	Study FTEs Goal	Budget FTE	Budget $000
Agriculture	2,000	-	-	3,090	431	3,636	2,662	432	4,646	2,887	-	-
AID	-	-	-	64	-	-	-	22	221	-	12	100
Commerce	2,848	546	6,100	1,703	476	9,345	1,805	607	8,865	2,007	506	4,419
Corps of Engrs	-	-	-	2,000	144	1,000	3,000	431	4,000	1,379	-	-
DOD	-	-	-	15,000	-	-	20,000	-	-	25,000	-	-
Education	47	-	-	161	26	217	-	-	-	133	-	-
DOE	-	-	-	121	-	-	390	-	-	474	-	-
EPA	-	-	-	18	-	-	11	7	-	361	-	-
FEMA	-	-	-	39	11	100	28	-	-	70	-	-
GSA	-	-	-	2,592	769	2,000	2,638	969	5,132	2,387	568	6,060
HHS	3,000	-	-	2,150	142	1,813	2,076	262	800	2,068	-	-
HUD	-	-	-	435	59	497	75	95	1,221	344	-	-
Interior	3,080	-	-	2,767	-	-	3,711	483	6,125	1,844	-	-
Justice	-	-	-	482	-	-	1,065	67	1,098	1,628	502	5,876
Labor	-	-	-	222	50	422	184	119	624	44	-	-
NASA	-	-	-	67	-	-	66	47	416	-	-	-
OPM	-	-	-	1,089	39	24	555	91	602	201	201	347
SBA	-	-	-	-	-	-	77	-	-	564	22	188
State	-	-	-	203	29	246	283	58	440	272	35	300
Transportation	1,559	821	7,300	2,436	1,315	7,800	3,359	916	8,661	4,111	242	3,958
Treasury	2,300	-	-	4,402	554	4,685	1,312	958	8,120	1,363	377	3,200
USIA	-	-	-	29	20	173	84	8	63	32	14	200
VA	-	-	-	6,372	199	1,352	508	106	760	6,378	199	3,400
TOTALS	16,834	1,367	13,400	45,442	4,264	33,310	43,889	5,678	51,794	53,547	2,678	28,048

Tab 3

THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

29 FEB 1988

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
DIRECTORS OF THE DEFENSE AGENCIES
PRESIDENT, UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

SUBJECT: Commercial Activities (CA) Program

The National Defense Authorization Act for Fiscal Years 1988 and 1989 contains a provision that directly affects the Commercial Activities Program.

Section 1111 of the act requires that commanders of military installations be given certain authorities and responsibilities over contracting for commercial activities.

Effective immediately, the commander of each military installation under your jurisdiction shall have the authority and the responsibility to carry out the following:

1. Prepare an inventory each fiscal year of commercial activities carried out by government personnel on the military installation.

2. Decide which commercial activities shall be reviewed under the procedures and requirements of Office of Management and Budget Circular A-76 (or any successor administrative regulation or policy).

3. Conduct a solicitation for contracts for those commercial activities selected for conversion to contractor performance under the Circular A-76 process.

4. To the maximum extent practicable, assist in finding suitable employment for any employee of the Department of Defense who is displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation.

In cases where the decision to review has already been made and announced to Congress, the review will continue in accordance with existing regulations.

At the same time the law directs delegation of A-76 decision authority to installation commanders, Executive Order 12615 (attached) stresses the value of the A-76 program to the nation, and challenges the Department to do much better than we have in the past. I expect you to do your best to achieve the following FY 1988 A-76 study goals: Department of the Army - 8,450; Department of the Navy - 8,650; Department of the Air Force - 6,550; Defense Logistics Agency - 1,350. These goals may be further allocated. Please advise me of your management plans to meet the study goals by the end of February.

I am also counting on your leadership and innovation to make the A-76 process more attractive to installation commanders. If any OSD rules stand in your way let me know. I will approve any reasonable request for change.

I have asked the Assistant Secretary of Defense for Production and Logistics to provide me with quarterly reports on our progress. I solicit your support and that of your installation commanders to continue pursuit of our most productive economy and efficiency program.

Frank Carlucci

Attachment

TOTAL P.03

SENATOR STEVENS' QUESTIONS

QUESTION 1. What is the amount of employee fringe benefits provided by contractors compared to the amount paid by the Government?

ANSWER. The Government's fringe benefits amount to 29.55 percent of direct salary as follows:

Retirement	21.7%	Composite CSRS and FERS factor.
Insurance	4.7%	Health and Life
Other fringe	1.7%	Workmens' compensation, bonuses, unemployment
Medicare	1.45%	

Federal contractors are required to pay wages and fringe benefits at rates established by the Department of Labor under provisions of the Service Contract Act of 1965. As provided by Section 2(a)(2) of the Act, fringe benefits include: medical or hospital care, pensions or retirement, compensation for injuries or illness resulting from occupational activities, or insurance to provide for any of the foregoing.

Currently, the Department of Labor requires contractors to pay $1.84 per hour for fringe benefits not otherwise required by Federal, state or local law. As social security is mandated by federal law, it is required to be paid in addition to the $1.84 per hour.

The March 1988 report on "Employment and Earnings" from the Bureau of Labor Statistics shows that the average hourly earnings of production or non supervisory workers for the services industry was $8.80.

The Department of Labor fringe benefit rate of $1.84 per hour equates to 20.9 percent of the $8.80 hourly rate. Social security amounts to 7.51 percent of an employees earnings. Therefore, the minimum contractor fringe benefits equal 28.41 percent of direct wages versus 29.55 percent for Government employees.

QUESTION 2. Why don't you set up an A-76 lion team of professionals to brief employees about their employment rights if a contractor wins an A-76 study? The Coast Guard employees at Kodiak, Alaska were not properly briefed on their employment rights.

ANSWER. Our review indicates that the agencies have established the proper procedures to provide adequate briefings to employees on their employment rights. In the Kodiak case, the Coast Guard informed us that the union and the workforce were briefed on three separate occasions: January 1984, September 1987 and April 1988. Therefore, we do not believe a special briefing team is needed.

STATEMENT OF

DOUGLAS B. HANSEN

OFFICE OF THE

ASSISTANT SECRETARY OF DEFENSE

(PRODUCTION AND LOGISTICS)

Mr. Chairman and members of the Committee.

I appreciate the opportunity to discuss with you the Department's A-76 program, and the proposed Senate Bill (S909) concerning savings resulting from the A-76 program.

The Department has compiled an enviable record in reducing the cost of commercial-type activities through implementation of the A-76 program. Since Fiscal Year 1979 we have completed 2,100 A-76 studies involving over 68,000 military and civilian positions; an average of over 8,000 per year. Over ninety percent of the positions studied throughout the federal government have been completed by the Department of Defense. We estimate the Department spends between $150 and $300 million per year conducting these studies.

Our data shows that through Fiscal Year 1987 we have saved an average of 27% of the original cost of operation as a result of these A-76 competitions. We estimate that the annual savings amount to $660 million.

Senate Bill S909 would require DoD to return to the Treasury all of it's A-76 program savings. That would penalize the very source of the savings, the installation where the study was conducted. In order to properly incentivize our installations to complete A-76 studies, the

impact of the investment of resources necessary to conduct A-76 studies needs to be mitigated by allowing the installations to share in the savings they themselves generate.

The recent Executive Order on Commercial Activities (A-76) recognized this when it authorized the retention of first year savings "...to reward employees covered by the studies for their productivity efforts, or for use in other productivity enhancement projects".

The Executive Order requires DoD's budget to be reduced prospectively based on the Department's A-76 savings history and our study targets. This method gives DoD a savings goal to meet and provides us an incentive to do well. S909 would remove this incentive.

The Department of Defense has acted within the spirit and intent of the A-76 program. Resources have been dedicated to accomplish the necessary cost comparisons and the Department, taxpayers, and the private sector have benefitted. Our accomplishments are a matter of record. We ask that a portion of our investment be returned in the form of a share of the savings we identify.

The Committee also asked the Department to comment on two other A-76 issues: a proposed amendment to the Federal Employees Retirement System Act; and, suggestions to improve the A-76 program appeals process.

The A-76 program cost comparison process has always been the subject of much discussion. However, the Department thinks that the changes made to those procedures in 1983, on balance, result in a fair and equitable cost comparison.

As a result of the Federal Employees Retirement System Act of 1986 we were directed to not include the cost of social security and thrift plan contributions in either the government's cost or the private sector's. This resulted in biasing A-76 program competitions towards private sector performance because private sector social security and thrift plan costs are higher than the government's. The Administration supports the proposed amendment to the act which would restore equity to the process.

In regard to the suggestion to allow the General Accounting Office to review employee appeals to A-76 decisions, we are opposed to a Legislative Branch activity having the authority to overrule Executive Branch management decisions. In addition, Congress should consider whether expansion of the jurisdiction of the General Accounting Office to include appeals by federal employees, as a unit, or

through their representatives would be counterproductive. For example, the inclusion of additional avenues for appeal or additional issues subject to the appeal process could complicate an already complex and time consuming process. The existing appeals process is fair and adequately protects the rights of all affected parties while at the same time preserving management's proper responsibilities in the decision making process. This proposed change could also invite new considerations for appeal that would only serve to disrupt or delay the current process without making substantive improvements in the process.

In conclusion, our A-76 program efforts are resulting in significant savings to the taxpayer and improvements in management. We would like to do more, and the President has asked us to triple our study output. Enactment of S909 and the proposed changes to the appeals process would be counterproductive to those efforts. Enactment of the proposed change to the Federal Employees Retirement System Act would restore equity to the A-76 costing procedures.

This concludes my formal statement. I hope that I have provided you with information that is both useful and informative.

I will be pleased to answer any questions you may have.

MR. HANSEN'S RESPONSES TO WRITTEN QUESTIONS SUBMITTED BY SENATOR PRYOR

Question 1. Mr. Hansen, how much has DoD saved annually by contracting out since 1981? Do these savings include the costs of conducting the A-76 cost studies, early retirement and retained pay? Are these costs outlined in the decision summaries which accompany the contracts?

Answer. Since Fiscal Year 1981 the Department has achieved annual savings of $584.6 million through OMB A-76 cost competitions.

This figure does not include the cost of conducting the studies, but a retirement pay factor is added to the government's in-house personnel costs. Retained pay is captured in the 10 percent differential applied to the private sector bids. This is added in order to compensate for such miscellaneous costs.

The costs associated with conducting the study are not outlined in the government's bids.

Question 2. How does DoD currently use A-76 savings? Can you provide examples of purchases, projects, or work that have been funded with A-76 savings? Does a commander keep the savings or does it float up to the command level? Is there a relevant DoD-wide policy?

Answer. Savings generated from the A-76 program are used by the DoD Components to help reduce the size of DoD's overall budget request. They may also be used to accomplish unfunded requirements which have been authorized by Congress.

We are not able to identify funds saved by the A-76 program, or other efficiency/productivity programs, with specific expenditures. The Operations and Maintenance appropriation is not managed to that level of detail.

Savings resulting from A-76 cost comparisons are not generally left at the installation, but are managed at the Headquarters level.

The DoD policy on A-76 savings, as stated in our revision of DODD 4300.15, Commercial Activities Program, is to make available to the installation commander, when possible, a share of any resources saved or earned so that the commander can improve operations and working and living conditions on the installation.

Question 3. You claim that DoD will not have any incentive to perform contracting out studies if S. 909 is passed. However, the November Executive Order mandates that these studies be performed. Are you saying that DoD would deliberately disobey the Executive Order if S. 909 in enacted?

Answer. Not at all. I'm saying that a lot of effort, including resources up front, goes into these studies and the installation commander finds it helpful when the studies provide a return on investment that will benefit the installation.

Question 4. If we assume that some "incentive" is necessary for DoD to contract out efficiently, what percentage of the "savings" would be required?

Answer. The Executive Order calls for Agency/OMB negotiation on the subject of retained savings. Our position is that 25% of the savings, to be distributed to the government workers involved in the cost comparison, is fair compensation for the efficiencies resulting from their efforts.

Question 5. The Nichols amendment contained in the FY88 DoD Authorization Bill gave base commanders increased authority over cost studies at their installations. What guidance or regulations has DoD issued to implement that amendment?

Answer. Secretary Carlucci sent an implementing memorandum to the Service Secretaries and Heads of the Defense Agencies on Feburary 29. Each of the Services then sent implementing instructions to their field activities. In addition, the Department has revised its Directive and Instruction on the A-76 commercial activities program.

Question 6. S. 909 contains a requirement for meetings with employees in the belief that employees are an invaluable resource in performing a cost study. What problems would requiring such meetings create?

Answer. Employees *are* an invaluable resource in performing cost studies. It is for that reason that they are typically included in all phases of the study. Their knowledge of the job requirements makes their involvement crucial to the completion of an accurate study. Employees and employee union representatives are included from the beginning and are consulted and briefed throughout the process. Requiring that meetings take place at certain times and places would only serve to add unnecessary structure to a process that already works well.

Question 7. You oppose the proposal to define federal employees as interested parties under the Competition in Contracting Act of 1984 because it would give GAO the "authority to overrule executive branch decisions."

Do you oppose the current use of the GAO appeals route by private contractors for A-76 protests? Are such protests "an overruling of Executive Branch management decision?"

According to GAO, the average contractor appeal is resolved in 32 days. How long does the average federal employee procedure and abritration take?

Answer. The answer to question 7 is being provided by the Office of Management and Budget.

Question 8. You also cite a possible proliferation of appeals routes as a problem with the draft proposal. If the proposed legislation was amended to require that the employees choose one route or the other, would that meet your concerns?

Answer. As I stated in my testimony before your committee on March 30, the inclusion of additional avenues for appeal or additional issues subject to the appeal process can only complicate an already complex and time consuming process. The existing appeals process is fair and adequately protects the rights of all affected parties while at the same time preserving management's proper responsibilities in the decision making process.

Question 9. According to a DoD report, the amount of contract work at DoD has grown by 151 percent in the last eight years. The number of civil employees has grown 13.6 percent. This suggests that contracting out is not being used to replace federal employees but to augment them. How do you reconcile to continuing growth of the numbers of both federal and contract employees?

Answer. The increase in the number of contract employees is a result of the Department's efforts to obtain base support services at the most reasonable cost through OMB A–76 cost competitions. In approximately 50 percent of the studies performed it was determined that the service could be provided at a lower cost by private contractors. Thus the increase in contract employees.

The civilian personnel figures shown in the report you referred to include *all* DoD civilian employees, those involved in commercial activities and those employees involved in the performance of all other functions. Personnel increases in other than commercial activities functions may occur with no relationship, direct or indirect, to changes in the number of contract employees.

MR. HANSEN'S RESPONSE TO A WRITTEN QUESTION SUBMITTED BY SENATOR STEVENS

Question. What is the difference between the minimum fringe benefit factor required of A–76 contractors under the Service Contract Act and what we provide as a minimum for federal employees?

Answer. The answer to this question was prepared by the Office of Management and Budget and will provided by them under separate cover.

Testimony of Gary D. Engebretson

Executive Director of

the Contract Services Association of America

MR. CHAIRMAN:

THANK YOU FOR THIS OPPORTUNITY. WE WANT TO APPLAUD THE COMMITTEE FOR SHOWING INTEREST IN ISSUES THAT IMPACT THE SERVICES INDUSTRY. I AM GARY ENGEBRETSON, EXECUTIVE DIRECTOR OF THE CONTRACT SERVICES ASSOCIATION OF AMERICA. CSA IS THE MAJOR TRADE ASSOCIATION EXCLUSIVELY REPRESENTING THOSE COMPANIES WHICH PROVIDE TECHNICAL AND SUPPORT SERVICES TO FEDERAL, STATE, LOCAL AND FOREIGN GOVERNMENTS. CSA SERVES AS A FORUM AND ADVOCATE FOR THE ENTIRE RANGE OF ISSUES OF INTEREST TO THE CONTRACT SERVICES INDUSTRY.

FOR FISCAL YEAR 1987, THE SERVICES INDUSTRY ACCOUNTED FOR $88.9 BILLION DOLLARS OR 49 PERCENT OF THE FEDERAL PROCUREMENT BUDGET. I ONLY STATE THIS TO EMPHASIZE THE FEDERAL GOVERNMENT'S RELIANCE ON THE PRIVATE SECTOR FOR SERVICES.

DUE TO THIS LARGE FIGURE IT IS ESSENTIAL THAT ALL PARTIES INVOLVED WORK TOGETHER TO ENSURE THAT ANY PENDING LEGISLATION THAT INFLUENCES FEDERAL PROCUREMENT OF SERVICES IS COST EFFECTIVE FOR THE GOVERNMENT AND FAIR FOR ALL PARTICIPANTS. THEREFORE, I TAKE GREAT PRIDE IN THIS OPPORTUNITY TO ADDRESS THE CONCERNS OF THE SERVICE CONTRACTORS.

CSA IS IN SUPPORT OF THE CONCEPT OF USING OMB CIRCULAR A-76 SAVINGS TO REDUCE THE BUDGET. S.909, THE "COMMERCIAL ACTIVITIES CONTRACTING ACT OF 1987" CAN TAKE ADVANTAGE OF THE IMPROVED EFFICIENCY IF THE PLANNED COST SAVINGS WERE TAKEN OUT IN ADVANCE. PROJECTING THE SAVINGS OF A-76 UTILIZATION WILL GIVE AGENCIES A GOAL TO MEET. WITHOUT RIGID BUDGET GOALS

AGENCIES WOULD LOSE THEIR INCENTIVE TO UTILIZE THE PROGRAM AND COST STUDIES WOULD BE DELAYED AND CANCELLED. HOWEVER, IF AGENCIES WERE ALLOWEI TO SAVE A PERCENTAGE OF THE SAVINGS THEY GENERATED GOVERNMENT MANAGERS ANI POLICY MAKERS WOULD BE ENCOURAGED TO DEVELOP THE MOST EFFICIENT ORGANIZATIONS. AGENCIES SHOULD BE REWARDED FOR UTILIZING PROGRAMS THAT SAVE THE TAXPAYERS MONEY.

IF SENATOR REID AND THIS COMMITTEE DID NOT ALREADY APPRECIATE THE BENEFITS OF THE A-76 PROGRAM WE WOULD NOT BE HEAR TODAY SEEKING WAYS OF IMPROVING THE PROCESS. IT IS NOT NECESSARY FOR ME TO DESCRIBE COMMERCIAL ACTIVITIES IN DETAIL, THE PROCESS HAS PROVEN TO WORK AND WORK WELL. I'M SURE THAT WE ARE ALL AWARE OF THE PROGRAM'S BENEFITS AS STATED BY THE GENERAL ACCOUNTING OFFICE, CONGRESSIONAL BUDGET OFFICE AND COUNTLESS OTHER STUDIES. I HAVE INCLUDED TWO ENCLOSURES FOR THE RECORD THAT GIVE A BRIEF HISTORY OF THE A-76 PROGRAM AND A SYNOPSIS OF RECENT STUDIES CITING COST SAVINGS.

I LIKE TO THINK EVERYONE INVOLVED CAN REVIEW THE FACTS OBJECTIVELY AND WORK TOGETHER TO TRULY IMPROVE THE PROBLEMS. UNFORTUNATELY, WHILE REVIEWING THE TESTIMONY FROM THE PREVIOUS HEARING I FAILED TO FIND ANY USEFUL UNION INFORMATION THAT CAN BE USED TO IMPROVE THE PROCESS. INSTEAD I FOUND UNSUBSTANTIATED COMMENTS OF ISOLATED CASES THAT ARE NOT A TRUE REFLECTION OF THE FEDERAL PROCUREMENT MARKETPLACE.

I ASSURE YOU THAT CONTRACTORS CAN DESCRIBE EQUALLY AS FRUSTRATING STORIES THAT INCLUDE LAST MINUTE CANCELLATIONS AFTER COSTLY PROPOSALS HAVE ALREADY BEEN SUBMITTED, INDEFINITE DELAYS, COUNTLESS UNSIGNED AND UNDATED AMENDMENTS, INTENTIONALLY DAMAGED EQUIPMENT, LOST OR DAMAGED USER'S

MANUALS AND BLUEPRINTS, POLITICAL INTERVENTION BY THE STATE'S CONGRESSIONAL DELEGATIONS, OUTDATED PERFORMANCE WORK STATEMENTS AND THE LIST GOES ON AND ON. I DO NOT FEEL THAT THIS MUDSLINGING WILL AID YOU IN IMPROVING THE PROCESS.

I CANNOT COME BEFORE YOU IN GOOD FAITH AND SAY THAT THE INDUSTRY DOES NOT HAVE ITS "BAD APPLES" BECAUSE ITS TRUE. WE AT CSA ARE ESTABLISHING A SELF-GOVERNANCE AND PROFESSIONAL STANDARDS PROGRAM TAILORED FOR GOVERNMENT SERVICE CONTRACTORS. WE HOPE THAT THIS WILL BE AT LEAST ONE WAY TO RESPOND TO LINGERING DOUBTS. I ASSURE YOU THAT CSA IS AS CONCERNED WITH ENSURING THAT CONTRACTORS ACT IN A LEGAL AND ETHICAL MANNER AS YOU ARE. A SINGLE COMPANY ACTING IN AN UNETHICAL MANNER CAN DESTROY THE CREDIBILITY OF THE ENTIRE SERVICES INDUSTRY.

WE ARE NOT FACING A POLICY PROBLEM BUT RATHER A PROBLEM OF IMPLEMENTATION. UNTIL RECENTLY, VERY LITTLE GUIDANCE EXISTED CONCERNING THE POTENTIAL BUDGET IMPACT OF GREATER RELIANCE ON THE PRIVATE SECTOR. BUT AS SENATOR REID STATED "WE ARE MOVING IN THE RIGHT DIRECTION". OMB'S PLAN TO REDUCE AGENCY BUDGET REQUESTS TO REFLECT ANTICIPATED SAVINGS FROM A-76 IS AN EFFECTIVE WAY TO REDUCE FEDERAL SPENDING. FOR S.909 TO WORK BEST, COST SAVINGS MUST BE REMOVED IN ADVANCE. NO REALISTIC OR EFFICIENT BUDGET MANAGER CAN REASONABLY EXPECT UNSPENT MONEY TO BE RETURNED AT THE CLOSE OF THE FEDERAL GOVERNMENT'S FISCAL YEAR.

INSTEAD, CONGRESS MUST STUDY AN AGENCY'S BUDGET REQUEST, EVALUATE THEIR OPERATIONAL COSTS AND THEN PROVIDE A SOUND, EFFICIENT, BUDGET THAT USES EVERY RESOURCE TO LOWER COSTS WITHOUT REDUCING SERVICES. THIS APPROACH WILL HELP THE AGENCY'S AND CONGRESS ACHIEVE REALISTIC BUDGET GOALS.

WHEN THE DEPARTMENT OF DEFENSE BUDGET FOR FY 1989 WAS FIRST FORECASTED FIVE YEARS AGO, IT WAS SET AT $456.4 BILLION; WHEN THE FISCAL YEAR BEGINS OCTOBER 1, THE BUDGET WILL BE JUST $299.5 BILLION. LAST FALLS BUDGET SUMMIT CONCLUDED WITH A TWO YEAR $76 BILLION DEFICIT CUTTING AGREEMENT FOR THE FEDERAL GOVERNMENT. DURING THIS TIME OF FISCAL CONSTRAINT, PRODUCTIVITY IMPROVEMENT AND EFFICIENCY SEEKING PROGRAMS HAVE BECOME STANDARD GOOD-MANAGEMENT TOOLS.

COMMON SENSE WOULD DICTATE, THAT IF SLIGHTLY AMENDED, S.909 CAN BE A USEFUL VEHICLE TO IMPLEMENT OMB CIRCULAR A-76 AND REDUCE FEDERAL SPENDING. THIS LEGISLATION, ALONG WITH THE PRESIDENT'S FY 1989 BUDGET AND NOVEMBER 1987 EXECUTIVE ORDER ON THE COMMERCIAL ACTIVITIES PROGRAM ARE SIGNS THAT PROGRESS IS BEING MADE IN THE FIGHT TO REDUCE GOVERNMENT WASTE AND INEFFICIENCY.

WE AT CSA BELIEVE THAT S.909 IS BENEFICIAL BECAUSE IT ADDRESSES THE COST SAVINGS OF A-76 PROGRAMS REGARDLESS OF WHETHER THE CONTRACT IS RETAINED IN HOUSE OR CONTRACTED OUT. IF CONGRESSIONAL CONCERNS TO REDUCE FEDERAL SPENDING ARE VALID, LETS UTILIZE EVERY RESOURCE AVAILABLE WHICH MEANS GREATER RELIANCE ON THE PRIVATE SECTOR.

THE ENTIRE PROCESS IS A WIN-WIN SITUATION FOR THE FEDERAL GOVERNMENT AND THE U.S. TAXPAYER. WHEN A COMMERCIAL ACTIVITY IS CONTRACTED OUT, CBO ESTIMATES THAT FOR FY 1986 A SAVINGS OF 35 PERCENT WAS REFLECTED. IF A COST COMPARISON IS COMPLETED BUT THE WORK REMAINS IN HOUSE A SAVINGS OF 20 PERCENT WILL STILL BE ACHIEVED BECAUSE OF THE THE INCREASED EFFICIENCY RESULTING FROM THE COST STUDY.

TAXPAYER SAVINGS SHOULD BE ENOUGH INCENTIVE TO REDUCE OBSTACLES AND CORRECTLY IMPLEMENT THE A-76 PROGRAM.

FOR THE PROGRAM TO BE FAIR IT IS ESSENTIAL THAT GOVERNMENT AGENCIES AND THE CIVILIAN CONTRACTORS WORK TOGETHER TO ENSURE THAT FEDERAL EMPLOYEES RECEIVE THE PRIORITY THEY DESERVE. CSA AGREES THAT THEY SHOULD BE ACTIVE PARTICIPANTS IN DEFINING THE WORK STATEMENTS. S.909 WOULD ACHIEVE THIS BY REQUIRING AGENCY MANAGEMENT TO CONSULT WITH THE EMPLOYEES EVERY 30 DAYS DURING ANY STUDY.

IF S.909 IS ENACTED, WITH THE CONSULTATION REQUIREMENTS, I DO NOT FEEL THAT IT IS NECESSARY NOR BENEFICIAL TO INCREASE THE "GAO APPEALS BOARD JURISDICTION TO ALLOW FEDERAL EMPLOYEES, AS A UNIT, OR THEIR REPRESENTATIVES TO APPEAL AN AGENCY'S CONTRACT DECISION." THIS ADDITIONAL PROCESS WOULD ONLY DELAY THE AWARD OF THE CONTRACT AND WOULD NOT PROVIDE ANY ADDITIONAL OVERSIGHT THAT DOESN'T ALREADY EXIST IN THE SYSTEM.

IN ALL FAIRNESS TO FEDERAL EMPLOYEES, THEY DO NOT NEED THE PROCESS LENGTHENED. MR. GENE DODARO, THE ASSOCIATE DIRECTOR OF THE GENERAL GOVERNMENT DIVISION OF THE GENERAL ACCOUNTING OFFICE, STATED JANUARY 7, 1988 THAT "EMPLOYEES UNDERGOING AN A-76 STUDY FACE UNCERTAINTIES ABOUT THEIR FUTURE, WHICH CAN RESULT IN LOWERED MORALE AND REDUCED PRODUCTIVITY. THE PROCESS CREATES ANXIETY ABOUT WHETHER THE ACTIVITY WILL REMAIN IN HOUSE OR BE PERFORMED BY A CONTRACTOR." HE WENT ON TO SAY "SUCH ANXIETY CAN BE HEIGHTENED BY THE LENGTH OF TIME IT TAKES TO COMPLETE A STUDY. OUR PRELIMINARY ANALYSIS SHOWS THAT ON AVERAGE, FOR THE PERIOD

OCTOBER 1978 THROUGH DECEMBER 1986, IT TOOK 24 MONTHS TO COMPLETE A DEFENSE STUDY. ABOUT 40 PERCENT TOOK MORE THAN TWO YEARS TO COMPLETE, WITH A FEW EXTENDING FROM FIVE TO EIGHT YEARS."

CSA ALSO FEELS THAT THE CONSULTATION REQUIREMENTS, IF PASSED, SHOULD NEGATE ANY EMPLOYEE APPEAL OPPORTUNITY IF THAT WORK STATEMENT WAS BASED ON WRITTEN INPUT FROM THE FEDERAL EMPLOYEES. IN ADDITION, APPEALS SHOULD NOT BE MADE ON THE LEVEL OF IN HOUSE TECHNOLOGY. THIS ENTIRE PROCESS IS BASED ON USING PRIVATE SECTOR INNOVATION TO REDUCE FEDERAL GOVERNMENT COSTS.

THEREFORE, CSA DOES NOT FEEL THAT ANY CHANGE TO THE CONTRACT PROCESS THAT WOULD LENGTHEN THAT PROCESS IS BENEFICIAL FOR THE PARTICIPANTS. IT INCREASES THE COSTS FOR THE GOVERNMENT AND PRIVATE SECTOR AND PROLONGS THE UNCERTAINTY FOR FEDERAL EMPLOYEES.

THIS IS NOT TO SAY THAT THE CONTRACT SERVICES INDUSTRY LACKS CONCERN ABOUT THE POTENTIAL FOR UNEMPLOYMENT FOR FEDERAL EMPLOYEES. EVERY EFFORT IS MADE TO ACCOMMODATE THE CIVILIAN EMPLOYEES. ALL QUALIFIED WORKERS ARE OFFERED THE RIGHT OF FIRST REFUSAL WITH THE COMPANY THAT IS AWARDED THE CONTRACT. THIS MEANS THAT THE DISPLACED FEDERAL EMPLOYEE IS GUARANTEED THE FIRST OPTION ON ACCEPTING THE POSITION, ENSURING THAT THE LOCAL WORK FORCE RETAIN THEIR JOBS. THE PRESIDENT HAS REITERATED, IN BOTH THE BUDGET AND MOST RECENT EXECUTIVE ORDER ON COMMERCIAL ACTIVITIES, THE IMPORTANCE OF GOVERNMENT JOB PLACEMENT FOR THE DISPLACED EMPLOYEES.

I WOULD URGE THE UNIONS, FEDERAL GOVERNMENT AND CONTRACTORS TO WORK TOGETHER IN ORDER TO INSURE THAT THE BEST POSSIBLE SERVICES ARE PURCHASED WITH THE LEAST AMOUNT OF TURMOIL. WOULDN'T YOU RATHER SEE AGENCIES

CONTRACT OUT CERTAIN COMMERCIAL ACTIVITIES AT A LOWER COST USING PROPER MANAGEMENT TOOLS AND REDISTRIBUTE THE CIVILIAN EMPLOYEES THAN SEE SERVICES DIMINISH BECAUSE OF THE HIGH COST?

CSA DOES NOT OPPOSE S. 2188, WHICH WOULD AMEND SECTION 307 OF THE FEDERAL EMPLOYEES RETIREMENT SYSTEM ACT OF 1986. THIS BILL WOULD CORRECT A DEFINITIONAL PROBLEM THAT NOW COMPLICATES THE COST COMPARISON PROCESS. IT IS FAIR TO THE FEDERAL EMPLOYEES AND IT WOULD LIMIT FUTURE ATTEMPTS TO BLOCK CONTRACT AWARDS ON THE BASIS OF THE RETIREMENT COSTS. IN THE FUTURE I WOULD HOPE CONGRESS WILL PAY EQUAL ATTENTION TO THE UNFAIR FACTORS THAT PENALIZE PRIVATE CONTRACTORS.

I HOPE THAT MY TESTIMONY PROVIDED BENEFICIAL INPUT THAT WILL AID YOU IN IMPROVING OMB CIRCULAR A-76 IMPLEMENTATION. HOWEVER, I HAVE ONE LAST QUESTION I WOULD LIKE TO ASK. WHY CAN SERVICE CONTRACTORS BE TASKED TO PROVIDE MAINTENANCE FOR OUR COUNTRY'S ICBM EARLY WARNING SYSTEM, CONDUCT THE BASE OPERATIONS FOR THE NAVY IN DIEGO GARCIA WHICH SUPPORT THE SHIPS IN THE PERSIAN GULF AND MAN THE "OPERATION BLUE LIGHTENING" CONTROL CENTER FOR THE CUSTOM SERVICE'S DRUG INTERDICTION PROGRAM IN SOUTHERN FLORIDA AND YET THE VERY SAME CONTRACTORS STILL FACE PROBLEMS WHEN THEY ATTEMPT TO TAKE OVER SIMPLE JOBS LIKE MOWING A LAWN AT AN ARMY, AIR FORCE OR NAVY BASE?

Contract Services Association

Origin and Development of OMB Circular A-76

The general principle that the Government should not engage in business competition with its citizens and taxpayers and should rely on the private sector for goods and services is well established and generally accepted as an essential corollary to our free enterprise economic system. Although never directly enacted into law, this policy has been quoted frequently in the Congress, and is supported by numerous studies and reports by select and standing committees of both Houses during the last fifty years.

The first executive directive on the subject was issued by the Bureau of the Budget (now OMB) on January 15, 1955, as BoB Bulletin 55-4. This bulletin stated that the "Federal Government will not start or carry on any commercial activity to provide a product or service for its own use if such product or service can be procured from private enterprise through ordinary business channels". Exceptions to the policy, by the head of an agency, were permitted "only where it is clearly demonstrated in each case that it is not in the public interest to procure such product or service from private enterprise".

Succeeding bulletins were issued in 1957 and 1959, with the same basic thrust - reliance on the private sector was the policy, any exceptions had to be justified in accordance with prescribed criteria. These bulletins led to a permanent BoB circular and Circular A-76 emerged on March 3, 1966, following a lengthy and contentious gestation process involving BoB, the General Accounting Office, and the Department of Defense. The policy statement was simplified by observing that "The guidelines in this Circular are in furtherance of the Government's general policy for relying on the private enterprise system to supply its needs". It also recognized that in some instances, "it is in the national interest for the government to provide directly the products and services that it uses". Five criteria, including relative costs, were identified as the basis for exceptions from the policy.

Consistent with the trend of increasing emphasis on relative cost, the first major revision of Circular A-76 (August 30, 1967) dealt primarily with cost comparison. As revised, the Circular informed Government agencies that a cost comparison should be performed before converting to a private contract in cases where there was reason to believe that savings could be realized by Government performance. Another important change directed that incremental costing would be used in developing the Government cost estimate, rather than full allocation of overhead and indirect costs which Government contractors are required to use.

The next revision was made on October 18, 1976 after the Office of federal Procurement Policy was created in OMB and became responsible for the circular. it specified factors to be used for calculating the cost of

Government fringe benefits, including a factor of 24.7% for Civil Service retirement. This new factor, compared to the 7% rate of agency contributions to the retirement fund (which had been used in cost comparisons), produced strong opposition from Federal employee groups as the Carter Administration was taking over the White House and OMB. Consequently, the Circular was revised again on June 13, 1977 to change the retirement cost factor temporarily to 14.7% while a thorough review of the Circular and cost comparison guidelines was conducted.

Following this review, and receipt of public comments on draft changes, the Circular was extensively revised on March 29, 1979. The revision transformed the policy of reliance on the private sector to a policy of relying on the least costly method of acquiring goods and services needed by the Government. it defined "governmental functions", which are to be performed only by Government personnel; prescribed criteria by which Government activities can be authorized without regard to cost; and directed that all other commercial activities be subjected to comparative cost analysis to determine whether they would be continued or converted to contract performance.

To support this dramatic shift to reliance on relative cost, OMB issued a comprehensive Cost Comparison Handbook, designed to ensure valid and equitable comparisons between the costs of government and contract performance.

There were numerous other changes in the 1979 revision, most intended to impart "balance" to the guidelines in response to concerns expressed on behalf of affected Government employees:

- Agencies were encouraged to maximize efficiency of the Government activity before conducting a cost comparison,

- a cost differential favoring continuation of Government activities was introduced,

- estimates of every conceivable cost of conversion were added to the cost of contract performance,

- appeal procedures were added,

- successful contractors were required to give a right of first refusal of employment to displaced Government personnel,

- cost comparisons were integrated into the procurement process to ensure that contract costs would be based on firm, enforceable bids or proposals, even though the Government cost remained a non-binding estimate.

Outside of DoD, implementation of the new guidelines was disappointingly slow-agencies delayed for months, and even years, the issuance of implementing instructions and training of personnel to conduct cost

comparisons. DoD, fully aware of the advantages of the program (from past experience) in saving money and personnel spaces, implemented the new procedures more rapidly. As initial cost studies were conducted and most of them resulted in conversions to contract performance, advocates of in house performance discovered several loopholes in the implementing instructions which could be used to shift cost figures to favor Government performance. They also learned to structure work statements and contract terms to discourage contractors from bidding or to force them to include large contingencies in their bid that would inflate the cost of contract performance.

At the same time, Congress, under pressure from federal employee constituents and other special interest groups, began to include exemptions from contracting out in authorization and appropriation bills. DoD was prohibited from conducting any cost comparisons for the first half of FY 1983 and prohibited from contracting for fire protection and security services for the entire year, despite estimates that this restriction would cost DoD $50 million in unnecessary costs. the General Services Administration was prohibited from contracting for guard or custodial services during FY 1983, at a cost of $15 million to the taxpayers. Despite these unnecessary costs, Congress extended the moratorium on contracting out fire protection and security services in DoD for two more years, and has now enacted permanent prohibitions on contracting for these services when being performed by Government employees.

Government contractors and potential contractors, both large and small businesses, had been encouraged by Circular A-76 to compete for the needs of their Government, and had invested scarce capitol and other resources in responding to solicitations for cost comparisons. They saw these resources wasted as cost figures were manipulated to protect in house activities, and administrative appeals of improprieties in the cost comparison process were summarily dismissed.

The story of OMB Circular A-76 is not a happy one. It is a story filled good intentions, great promise of benefits to the nation, the private sector and the taxpayer, but very limited results. It demonstrates all the difficulties involved in making a constructive change in a large bureaucracy - resistance of those who feel threatened, the inertia which protects the status quo, and the inevitable political influence of a small but vocal minority.

Contract Services Association

Cost Savings Resulting from A-76 Implementation

The federal government's course of non-competitive performance of commercial activities costs U.S. taxpayers approximately $50 billion annually. It is our desire to increase the implementation of the Office of Management and Budget's (OMB) Circular A-76, which could greatly decrease the federal deficit.

In the General Accounting Office (GAO) report to Congress, Federal Productivity: Potential Savings From Private Sector Cost Comparisons (GAO/GGD-87-30), several studies, completed since 1982, were compiled that estimate the savings if A-76 were more widely implemented. I would like to address the highlights of these studies as they pertain to the federal budget:

1. In a 1982 study the Congressional Budget Office (CBO) examined four long-term plans with savings that would be realized decades after full implementation. Budget savings under these four options ranged from $500 million to $1.2 billion annually.

a. CBO's first option maintained OMB's current A-76 program. 165,000 commercial activites positions would convert to contract with a realized savings of $900 million annually.

b. CBO's second option modified the cost comparison guidelines to recognize fully the costs of retirement and federal employee layoffs. This modification resulted in 135,000 positions converting to contract with a savings of $900 million annually.

c. Option III reduced the legislative options of the Department of Defense (DOD) and Veterans Administration (VA) conversions. It converted an additional 50,000 positions. When added to the second option $1.2 billion was saved.

d. The fourth option maximized near-term savings by limiting conversions only when cash payments under contracting-out are lower than current outlays for in-house performance. A focus on near-term savings resulted in 95,000 positions converting with a savings of $500 million annually.

2. In a 1983 study the National Academy of Public Administration (NAPA) estimated that the A-76 could generate $1 billion or more per year in savings. NAPA identified 11,000 commercial and industrial activities being performed by the goverment costing $19 billion. NAPA estimated that if even of the activities were converted with a savings of 10 to 15 percent, $1 billion could be saved annually.

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3. In a 1984 A-76 program progress report OMB conducted an inventory of commercial activities costing $6 billion and employing 226,000 federal workers. With average A-76 savings of 20 percent, OMB calculated that potential savings would exceed $1 billion.

a. OMB noted that emphasis was placed primarily on the contracting out of blue-collar positions. If emphasis could be shifted to also include white-collar positions, then the total A-76 inventory would double in size.

b. OMB's report Management of the United States Government, Fiscal Year 1987, estimated that the commercial review schedule would result in annual nondefense budget savings of $369 million by the the end of FY 1991.

4. The President's Private Sector Survey on Cost Control (PPSSCC) concluded its 1984 study of federal government management and operations by endorsing 6 of PPSSCC's 36 functional task forces for potential for A-76 savings. The PPSSCC's Management Office took a broad view of the A-76 implementation and estimated annual savings of $4.6 billion.

5. The Heritage Foundation conducted a 1986 estimate of savings from the A-76. The foundation estimated that an expanded, reformed A-76 program would save $3 billion annually. The Heritage Foundation concluded by saying that if DOD restrictions were lifted 500,000 positions costing $10 billion would be converted to contract with savings of 30 percent or $3 billion per year.

Almost overwhelming evidence concludes that the A-76 program saves the federal government money. Yet, there are still critics of the program. The main argument used to combat the A-76 is the problem of displaced workers.

In the April 15, 1985, GAO report DOD Functions Contracted Out Under OMB A-76: Contract Cost Increases and The Effects On Federal Employees (GAO/NSWIAD-85-49), a sample was taken on the effects of contracting out on government employees. In a random sample of 31 functions converted to contract during FY 1983 2,535 employees were affected, 1,881 (74 percent) obtained other government positions. Only 129 (5 percent) were involuntarily seperated.

In a 1984 DOD report to Congress on the commercial activities program showed similar results. The report showed that of the 9,650 affected, 9,035, or 94 percent, were either placed in other government jobs or retired. Of the remaining 615, about half obtained employment with the contractors.

I hope that this information provides some insight concerning the benefits of the A-76 program, the results are clearly beneficial and the limitations are minimal.

DEPARTMENT OF LABOR

DEC 7 1987

Mr. J. Curtis Mack, II
Acting Administrator
National Oceanic and Atmospheric
Administration (NOAA)
Room 5128, Main Commerce Building
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Mack:

This is in reference to the October 1 letter you received from Mr. Peter J. Carre regarding your agency's proposed service contract with Aspen Systems Corporation to operate NOAA's Central Library. Mr. Carre represents a group of employees at the Central Library who are concerned that this contractor may use unpaid volunteers to perform certain of the activities required under this contract, which is subject to the Service Contract Act (SCA). A copy of this letter was forwarded to the Department of Labor for informational purposes.

If this information is accurate, you may wish to advise the contractor of its obligation under SCA to pay service employees engaged in the performance of the contract no less than the minimum wages and fringe benefits provided for in the SCA wage determination included in the contract. Under section 8(b) of the Act, the term "service employee" includes any person engaged in performing the contract requirements except those individuals who are employed in a bona fide executive, administrative, or professional capacity as those terms are defined in Regulations, 29 CFR Part 541. If no SCA wage determination has been included in the contract, then the contractor must pay all persons performing work under the contract no less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act, currently $3.35 per hour. Thus, any "volunteer" performing work required under a covered service contract is a service employee within the scope of SCA and must be paid no less than the minimum compensation required under SCA.

In view of the potential for SCA violations in this case, we are requesting that you review this matter and provide us with a report of your findings. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/

Paula V. Smith
Administrator

FILE COPY

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

November 16, 1987

MEMORANDUM FOR: William Matuszeski
Director, Office of A-76 Activities
NOAA

FROM: James K. White
Assistant General Counsel
for Finance and Litigation

SUBJECT: Applicability of Service Contract Act of 1965 to Proposal by Aspen Systems Corporation to Use Voluntary Assistance in Operating the NOAA Central Library

This responds to a request by NOAA for a legal opinion concerning whether the Service Contract Act of 1965 is applicable to the proposed use by Aspen Systems Corporation of voluntary assistants under a prospective contract to operate the NOAA central library in Rockville, MD. In our opinion, SCA is inapplicable to the proposed use.

The Service Contract Act of 1965 (SCA) in 41 U.S.C. 351 states that:

> "(a) Every contract (and any bid specification therefore) entered into by the United States...in excess of $ 2,500...the principal purpose of which is to furnish services...through the use of service employees...shall contain...a provision specifying the monetary wages to be paid to the various classes of service employees in the performance of any contract or subcontract thereunder..."
>
> "(b)(1) No contractor who enters into any contract with the Federal Government...the principal purpose of which is to furnish services through the use of service employees and no subcontractor thereunder shall pay any...employees...performing work on such contracts less than the minimum wage specified under section 206(a)(1) of title 29..."

SCA and its implementing regulations in 29 C.F.R. Subpart C establish basic labor standards governing the award and performance of government contracts exceeding $ 2,500 where the principal purpose is to furnish services through the use of service employees. Section 351(a) states that SCA deals with minimum wages and Section 351(b) mentions a class of wage earning employees. This suggests that SCA is concerned with compensated work, not with voluntary services. In addition, 29 C.F.R. 4.104 mentions that the purpose of SCA is to preclude the use of Federal

Government purchasing power in unfairly depressing wages. This again apparently reflects SCA's concern with compensated work, not with voluntary services.

The legislative history of SCA also supports the position that SCA is inapplicable to voluntary services. The Report of the House Committee on Education and Labor mentions that many employees performing Federal service contracts were poorly paid, that little hope existed for an improvement of their position without some positive action to raise their wage levels, and that the Government was in effect subsidizing subminimum wages when government contracts were awarded with low wage standards, see H. Rept. No. 948, September 1, 1965. The Report, at pages 2-3, continually references compensated employment. For example, the Report uses terms such as wage standards, poorly paid, minimum wage laws, extremely depressed wage level, raise their wage level, element of wages and underpayment in discussing the history, the need for the legislation, and the provisions of the bill underlying SCA. It is clear from the Report that the purpose underlying SCA was to raise wages from a subminimum level to a prevailing wage level. There is no reference in the Report to uncompensated work or voluntary services. We believe that this silence, although not definitive, supports the position that SCA was not meant to apply to uncompensated or voluntary services.

Further, the Court of Appeals, in another context, has considered SCA and found that that the "remedial purpose" of SCA is to protect the government from subsidizing low wages to private sector service employees by awarding government contracts to those who can bid low by paying low wages. *See Nat'l. Maritime Union v. Commander, Military Sealift*, 824 F.2d. 1228, 1234 (D.C Cir.1986). This seemingly lends further support to the position that the SCA concerns compensated work and not voluntary services.

The SCA, its legislative history, the regulations and the decision in *Nat'l. Maritime Union v. Commander, Military Sealift, supra*, clearly reflect SCA's concern with compensated services. Although it is possible that a reviewing court could find otherwise, in our opinion, SCA is inapplicable to Aspen's proposed use of voluntary assistance under a prospective contract to operate the NOAA central library.

cc: Timothy Keeney

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

February 16, 1988

Honorable David Pryor
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Re: S. 909, the "Commercial Activities Contracting Act of 1987" (Reid, et al.), 100th Cong., 1st Sess.

Dear Mr. Chairman:

This is in further response to your request for comments from this Department on S. 909, the "Commercial Activities Contracting Act of 1987."

Provisions of the Bill

S. 909 would require that:

(1) all amounts saved by the Federal Government in the preceding fiscal year in contracting out commercial activities to the private sector pursuant to OMB Circular A-76 be returned to the Treasury within 60 days of the beginning of each fiscal year;

(2) each Executive agency, in the fiscal year in which the contracting out occurs, reduce its total number of civilian employees by the number of employees previously required to perform the contracted out activity;

(3) whenever an Executive agency contracts out a commercial activity previously performed by a branch of the military for that agency, that branch of the military must reduce its authorized end strength at the end of the fiscal year by the number of its personnel previously required to perform the commercial activity for the agency; and

(4) each Executive agency consult at least monthly with its civilian employees who will be affected by an A-76 determination and consider their views in developing and preparing the performance work statement and management efficiency study used to make the determination.

HUD's Position

HUD supports the purposes of the bill, but offers the following comment:

S. 909 would require that all savings, both from employment reductions and other expenses, which are realized from the contracting out of a commercial activity pursuant to OMB Circular A-76 are returned to the Treasury

and not used for any other purposes. However, the manner in which HUD budgets for an activity which is subject to A-76 review and contracting out is not consistent with the underlying premise of the bill. The bill assumes there will be savings from a contracted out activity which can be returned to the Treasury. However, OMB requires that savings from activities scheduled for A-76 review be reflected in the budget for the fiscal year in which the contract is proposed to be entered. HUD, therefore, reflects these savings by developing a cost estimate, including any staff reductions, of the activity to be contracted out. This cost estimate then becomes a part of the total budget estimate and a part of an appropriation request for the upcoming fiscal year. Thus, savings are generally anticipated before funds are appropriated, leaving no additional savings to be realized for return to the Treasury thereafter, as contemplated by S. 909. Nevertheless, consistent with S. 909's purpose to make savings permanent, current budgetary procedures at HUD already ensure that savings attributable to a contracted out activity become permanent because the reduced cost of the activity becomes the cost basis of the activity in the budget for future years.

There may, however, be instances where the original cost estimate of a contracted out activity is inaccurate and additional savings do result. HUD attempts to ensure a return of these savings to the Treasury. As noted above, funding for a contracted out activity is generally part of a larger appropriation. This occurs because the Federal budget is too large for Congress to earmark specific funds for each activity performed or contracted out by an agency. The appropriation process also recognizes that (1) the accurate budgeting of a specific dollar amount for every activity is very difficult; and (2) a shortfall in the expected cost of one activity can generally be made up by a savings realized in another activity. Nevertheless, HUD attempts to budget each activity accurately, and any savings realized from the larger appropriation lapse at the end of the fiscal year and result in additional savings to the Treasury.

I should note that the Administration has undertaken significant privatization efforts, such as Executive Order 12615, issued in November 1987, which promotes the Federal Government's effort, through the contracting out of commercial activities, to acquire goods and services in the most economical and efficient manner.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Very sincerely yours,

J. Michael Dorsey